

**THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF STEVEN CHAMBERS  
SWORN BEFORE ME  
ON THIS 13<sup>th</sup> DAY OF DECEMBER, 2012.**

  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

**0833824 B.C. LTD.**

**and**

**TERCON INVESTMENTS LTD.**

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**AMENDED AND RESTATED OPERATING LOAN AGREEMENT**

**August 27, 2010**

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**ADDENDA**

## WHEREAS

- A. Tercon Investments Ltd. (the "Borrower") entered into an Operating Loan Agreement with WF Fund III Limited Partnership, carrying on business as Wellington Financial LP and Wellington Financial Fund III (the "Original Lender") dated October 1, 2007, as amended September 5, 2008 (collectively, the "Original Loan Agreement");
- B. By an Assignment of Debt and Security dated the date hereof between, *inter alia*, the Borrower, the Original Lender, and 0833824 B.C. Ltd. (the "Lender"), the Original Lender assigned, among other things, the Original Agreement to the Lender, including all indebtedness outstanding thereunder and all security granted to the Original Lender by the Borrower and its guarantors in relation thereto; and
- C. The Borrower and the Lender now wish to amend and restate the Original Agreement on the terms contained herein.

**NOW THEREFORE** in consideration of the covenants and agreements between the Parties contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement:

- (a) "Additional Compensation" has the meaning attributed thereto in Section 6.1(1);
- (b) "Aggregate Principal Amount" means the aggregate of the principal amount outstanding under this Agreement;
- (c) "Agreement" or "this Agreement" means this amended and restated agreement dated the date hereof between the Borrower and the Lender inclusive of all Schedules, as amended, confirmed, replaced or restated from time to time and "hereto", "hereof", "herein", "hereby" and "hereunder", and similar expressions mean and refer to the Agreement and, unless the context otherwise requires, not to any particular Article, Section, paragraph or other subdivision thereof;
- (d) "Assets" shall mean all property and assets of the Borrower, its Subsidiaries and/or the Obligors, as applicable, of every nature and kind and wheresoever situate, but shall exclude the property and assets of any Restricted Entity;

- (e) "**Authorization**" means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, or by-law, rule or regulation of any governmental entity, whether or not having the force of law, having jurisdiction over such Person;
- (f) "**Buildings and Fixtures**" shall mean all plant, buildings, structures, erections, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) situate on any of the Owned Real Properties and the properties that are the subject of the Real Property Leases;
- (g) "**Business**" shall mean the business of the Borrower and its Subsidiaries as previously or presently conducted;
- (h) "**Business Day**" means a day other than a Saturday, Sunday or any other day on which the principal commercial banks located in Toronto, Ontario are not open for business during normal banking hours;
- (i) "**Change of Control**" means (a) any sale of all or substantially all of the assets of the Borrower; (b) any merger or other business consolidation which results in the current shareholders of the Borrower, directly or indirectly, owning less than 50% of the surviving entity; or (c) the acquisition by a purchaser or group of purchasers who are not the direct or indirect current shareholders (or related to any existing shareholder) at the time of such acquisition of voting securities exchangeable for or convertible into voting securities of the Borrower resulting in the purchaser(s) of such securities owning more than 50% of all of the outstanding voting securities of the Borrower on a fully diluted basis; provided that any such occurrence is not or could not reasonably be expected to be materially adverse to the Lender as determined by the Lender in its sole discretion, acting reasonably;
- (j) "**Class A Shares**" means the shares without nominal or par value of the Borrower designated as Class A shares in its articles of incorporation dated September 29, 2005, as such shares exist at the commencement of business on this date; provided that in the event of a subdivision, redivision, reduction, combination, consolidation or reclassification, then, subject to adjustments, if any, having been made in accordance with the provisions of Section 5.4, "**Class A Shares**" shall mean the shares resulting from the subdivision, redivision, reduction, combination, consolidation or reclassification, as the case may be;
- (k) "**Collective Agreements**" shall mean the collective agreements binding the Borrower or any of its Subsidiaries and all related documents including letters of understanding, letters of intent and other written communications with bargaining agents for Employees of the Borrower or any of its Subsidiaries, which impose any obligations upon the Borrower or any Subsidiary, all as listed and described in the Disclosure Schedule;

- (l) "Contracts" shall mean all written or oral contracts, agreements, indentures, leases, instruments, commitments and orders made by or in favour of the Borrower or any of its Subsidiaries;
- (m) "Corporate Reorganization" means any transaction whereby all or substantially all of a corporation's undertaking, property and assets would become the property of any other Person whether by way of arrangement, reorganization, consolidation, amalgamation, merger, continuance under any other jurisdiction of incorporation or otherwise;
- (n) "Credit Documents" means this Agreement, the Security Documents, the Debenture and all other documents, certificates and instruments executed or delivered or to be executed or delivered by an Obligor to the Lender pursuant hereto or thereto, as the same may modified, amended, extended, restated or supplemented from time to time, and "Credit Document" shall mean any of the Credit Documents;
- (o) "Date of Prepayment" means a date specified in a written notice given by the Corporation to the Holder pursuant to Section 2.3;
- (p) "Debenture" means the amended and restated Series A secured debenture dated the date hereof issued by the Borrower in favour of the Lender;
- (q) "Debt" of the Borrower means, without duplication:
  - (i) all indebtedness of the Borrower for or in respect of borrowed money, credit or other financial accommodation, including liabilities and obligations (whether contingent or otherwise) with respect to letters of credit, letters of guarantee, bankers' acceptances or similar instruments issued or accepted by banks and other financial institutions for the account of the Borrower;
  - (ii) all indebtedness of the Borrower for or in respect of the purchase or acquisition price of property or services, whether or not recourse is limited to the repossession and sale of any such property;
  - (iii) all obligations under any lease entered into by the Borrower as lessee which would be classified as a capital lease in accordance with GAAP;
  - (iv) all obligations of the Borrower to purchase, redeem, retract or otherwise acquire any securities issued by the Borrower; and
  - (v) all Debt (as hereinbefore defined) or any other debt which is directly or indirectly guaranteed by the Borrower or which the Borrower has agreed to purchase or otherwise acquire or in respect of which the Borrower has otherwise assured a creditor against loss,



but "Debt" shall not include: (i) unsecured trade debt incurred in the ordinary course of business consistent with past practice; (ii) any contingent liabilities in connection with contracts entered into in the ordinary course of business; nor (iii) liabilities and obligations incurred and accrued in the ordinary course of business consistent with past practice;

- (r) **"Disclosure Schedule"** shall mean the schedule appended to this Agreement referencing the relevant provisions of this Agreement regarding certain information of the Borrower required to be disclosed to the Lender in connection with the transactions contemplated by the Agreement;
- (s) **"Domestic Accounts"** means Canadian dollar accounts receivable owing to the Borrower from Persons resident in Canada;
- (t) **"Eligible Accounts Receivable"** means any Domestic Accounts that are not Ineligible Accounts Receivable;
- (u) **"Employees"** shall mean all of the unionized and non-unionized employees of the Borrower and its Subsidiaries employed in the Business which, for greater certainty, shall include part time employees and employees on short term or long term disability, worker's compensation, sick leave, maternity or parental leave, or leave of absence or laid off employees on the date hereof, a list and details of which employees as of the date of the Agreement being set forth in the Disclosure Schedule;
- (v) **"Environmental Law"** means all federal, provincial, state, municipal or local statutes, regulations, by-laws, Environmental Permits, orders or rules, and any policies or guidelines of any governmental or regulatory body or agency, and any requirements or obligations arising under the common law, relating to the Environment, the transportation of dangerous goods and occupational health and safety;
- (w) **"Environmental Permits"** means all permits, licences, approvals, consents, authorizations, registrations and certificates issued by or provided to, as the case may be, any government, governmental or regulatory body or agency pursuant to an Environmental Law;
- (x) **"Event of Default"** has the meaning attributed thereto in Section 10.1;
- (y) **"Expiry Date"** means August 27, 2013;
- (z) **"Financial Statements"** shall mean the audited financial statements of the Borrower and its Subsidiaries for the period ended September 30, 2009 consisting of a balance sheet and an accompanying statement of income, retained earnings and changes in financial position for the period then ended and all notes to them;

- (aa) **"GAAP"** means, at any time, the generally accepted accounting principles in Canada, applied on a consistent basis, and statements and interpretations (if applicable) issued by the Canadian Institute of Chartered Accountants or any successor body in effect from time to time;
- (bb) **"Governmental Authority"** means the government of any nation, province, territory, municipality, state or other political subdivision of any nation, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or the application, enforcement, or interpretation of Law, including any central bank, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing;
- (cc) **"Governmental Charges"** means all taxes, levies, assessments, reassessments and other charges together with all related penalties, interest and fines, due and payable to any domestic or foreign government (federal, provincial, municipal or otherwise) or to any regulatory authority, agency, commission or board of any domestic or foreign government, or imposed by any court or any other law; regulation or rulemaking entity having jurisdiction in relevant circumstances if failure to pay could reasonably be expected to have a Material Adverse Effect;
- (dd) **"Ineligible Accounts Receivable"** includes, but is not limited to:
  - (i) receivables due more than ninety (90) days from the date of invoice or shipping, whichever is earlier;
  - (ii) Non-Domestic Accounts;
  - (iii) accounts for which greater than 50% of the balance is due more than ninety (90) days from the date of invoice;
  - (iv) accounts subject to offset based on deferred revenue;
  - (v) the excess accounts receivable from any particular customer which represents greater than 50% of the total receivable balance of the Borrower;
  - (vi) accounts subject to any holdbacks, contra accounts, or rights of set-off;
  - (vii) affiliate accounts; and
  - (viii) any other accounts excluded by the Lender, acting reasonably;
- (ee) **"Intellectual Property Rights"** shall mean (i) all domestic and foreign patents, trade marks, trade names, service marks, copyrights, industrial designs, trade secrets, inventions, know how, manuals, technology, software, customer and

supplier lists and other intellectual property, and (ii) all registrations and applications for registration of intellectual property;

- (ff) "Law" means all laws (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, rules, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority having force of law;
- (gg) "Licenses" shall mean permits, licenses, certificates of compliance, consents, approvals and authorization of, or registration with, any governmental body, including Environmental Permits, pertaining to the Business;
- (hh) "Lien" means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property;
- (ii) "Material Adverse Effect" means (a) any material adverse change in the assets, operations or financial condition of the Borrower or any of its Subsidiaries; (b) any material adverse effect on the ability of the Borrower or any of its Subsidiaries to perform its obligations under the Credit Documents; or (c) any material impairment of the remedies of the secured parties under the Credit Documents;
- (jj) "Non-Domestic Accounts" means accounts receivable that are not Domestic Accounts;
- (kk) "Non-Material Subsidiaries" means Tercon International Inc., Tercon Construction LLC, Tercon Construction (California) Inc., Tercon Leasing Inc., and Tercon Alaska Ltd.;
- (ll) "Obligations" means, without duplication, the aggregate amount of all obligations, liabilities and indebtedness, contingent or otherwise of the Borrower to Lender under the Credit Documents;
- (mm) "Obligors" means those parties set forth in Exhibit "D" to the Debenture and their respective successors, assigns, trustees, administrators, executors and "Obligor" means any one of them;
- (nn) "Original Lender" means WF Fund III Limited Partnership, carrying on business as Wellington Financial LP and Wellington Financial Fund III;
- (oo) "Owned Real Properties" means the lands and premises listed and described in the Disclosure Schedule by reference to their municipal addresses and proper legal descriptions;

- (pp) **"Permitted Debt"** means: (i) amounts owing under this Agreement; (ii) the Debenture; (iii) the indebtedness secured by the Permitted Encumbrances; and (iv) operating leases and capital lease obligations of the Borrower or the Subsidiaries incurred in the ordinary course of business, consistent with past practice, including, without limitation, the Borrower's obligations under its existing real property leases; provided that that in no event shall the aggregate of such amounts under subsections (iii) and (iv) exceed \$42,000,000;
- (qq) **"Permitted Encumbrances"** has the meaning attributed thereto in the Debenture;
- (rr) **"Person"** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted;
- (ss) **"Real Property Leases"** shall mean the leases for real property made in favour of the Borrower or a Subsidiary, as lessee or tenant, and all leasehold improvements on, in, over or under such leased real property which belong to the Borrower or a Subsidiary, as the case may be, all of which leases being listed in the Disclosure Schedule;
- (tt) **"Restricted Entities"** means Tahltan - Tercon Projects Ltd., Tahltan Tercon Limited Partnership, Seklep Hydro Constructors Ltd., Tercon A.C. Ltd. and AC&T Limited Partnership and **"Restricted Entity"** means any one of them;
- (uu) **"Secured Property"** has the meaning attributed thereto in the Debenture;
- (vv) **"Security Documents"** has the meaning attributed thereto in the Debenture;
- (ww) **"Subsidiary"** shall mean a corporation controlled by the Borrower, as the term "control" is defined in the Ontario Business Corporations Act as in effect at the date hereof and without reference to any amendments thereto after the date hereof; and
- (xx) **"Taxes"** shall mean (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any governmental entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll,

workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any governmental entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

**1.2 Headings**

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

**1.3 References to Sections**

Whenever in this Agreement a particular article, section or other portion thereof is referred to, such reference pertains to the particular article, section or portion thereof contained herein, unless otherwise indicated.

**1.4 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian currency.

**1.5 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

**1.6 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

**1.7 Amendment or Waiver**

No amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

**1.8 Governing Law; Attornment**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. Each of the Borrower and the Lender hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under or relating to this Agreement.

**1.9 Non-Business Days**

If any date on which any payment is due or any action is required to be taken is not a Business Day, the date for payment or taking such action shall be the next Business Day following the date specified for such payment or action.

**ARTICLE 2  
LOAN AMOUNTS OUTSTANDING**

**2.1 Loan Amounts Outstanding**

Subject to the terms and conditions hereof, the Borrower hereby acknowledges that it is indebted to the Lender under this Agreement in the principal amount of \$2,000,000 plus accrued interest (in the form of default and normal course interest) to August 27, 2010 of \$130,053.77 (collectively, the "Aggregate Principal Amount").

**2.2 Term and Repayment**

Unless converted in accordance with Article 5 herein, all indebtedness (including all accrued interest and fees in accordance with Article 3) outstanding under this Agreement and the other Credit Documents will become immediately due and payable on the Expiry Date.

**2.3 Prepayment**

Upon the written consent of the Lender, in its sole discretion, at any time following such date which is twelve (12) months following the date hereof, the Borrower may prepay the outstanding Obligations under this Agreement in full or in part, provided that partial prepayments must be in the amount of \$500,000 or a (whole number) multiple thereof, without penalty or payment of any additional fee unless otherwise directed by the Lender. No prepayment may be made unless a notice of repayment, specifying the Date of Prepayment and amount to be prepaid is delivered to the Lender not less than five (5) Business Days prior to the Date of Prepayment. For greater certainty, the Obligations under this Agreement may not be prepaid within twelve (12) months following the date hereof unless all interest (including all accrued interest) owing to the Lender is paid to the Lender in full.

**ARTICLE 3  
PAYMENT OF INTEREST AND FEES**

**3.1 Interest Rates and Fees**

The Borrower shall pay interest in Canadian Dollars on the Aggregate Principal Amount at a rate per annum equal to the sum of 8%. Interest shall be calculated

daily and on the basis of the actual number of days elapsed in a year of 365 days or 366 days, as the case may be and is payable monthly in arrears on the last day of each month. Any Obligations shall bear interest as well after as before demand, maturity, default or judgement, with interest on overdue interest.

### **3.2 Records**

The Lender will maintain records, in written or electronic form, evidencing all indebtedness owing by the Borrower to the Lender under this Agreement. The Lender will enter in such records details of all amounts from time to time owing, paid or prepaid by the Borrower to it hereunder. The information entered in such records will constitute *prima facie* evidence of the indebtedness of the Borrower to the Lender under this Agreement.

### **3.3 Interest Act (Canada)**

For the purposes of the *Interest Act (Canada)* and all other applicable Laws which may hereafter regulate the calculation or computation of interest on borrowed funds, the annual rates of interest and fees applicable under this Agreement to the Aggregate Principal Amount, are the rates as determined hereunder multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest or stamping fee is payable and divided by 365 or 366 as applicable.

### **3.4 Maximum Rate of Return**

Notwithstanding any provision herein to the contrary, in no event will the aggregate "interest" (as defined in section 347 of the *Criminal Code (Canada)*) payable under this Agreement exceed the maximum effective annual rate of interest on the "credit advanced" (as defined in that section) permitted under that section and, if any payment, collection or demand pursuant to this Agreement in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection or demand will be deemed to have been made by mutual mistake of the Borrower and the Lender and the amount of such payment or collection will be refunded to the Borrower. For purposes of this Agreement, the effective annual rate of interest will be determined in accordance with generally accepted actuarial practices and principles over the term of this Agreement on the basis of annual compounding of the lawfully permitted rate of interest and, in the event of dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Lender will be *prima facie* evidence, for the purposes of such determination.

### **3.5 Deemed Reinvestment Not Applicable**

For the purposes of the *Interest Act (Canada)*, the principle of deemed reinvestment of interest will not apply to any interest calculation under this Agreement, and the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

## ARTICLE 4 SECURITY

### 4.1 Security in favour of the Lender

As continuing security for the payment of the Obligations, the Obligors shall execute and deliver in favour of the Lender the Security Documents, such security to be first ranking subject only to Permitted Encumbrances.

### 4.2 Confirmation of Security and Obligations

(a) The Borrower hereby confirms and agrees that the Security Documents executed by it in favour of the Original Lender secure all of the debts, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, at any time due or accruing due of the Borrower under or in connection with this Agreement and the Debenture.

(b) Notwithstanding the amendments to the Original Loan Agreement by way of the execution and delivery of this Agreement or the execution and delivery of any additional Security Document in connection with this Agreement or the Operating Loan Agreement, the Borrower hereby irrevocably and unconditionally (i) acknowledges, confirms and agrees that each of this Agreement, the Debenture and the Security Documents and all of the covenants, agreements, obligations and liabilities of the Borrower under such documents are hereby ratified and confirmed, remain in full force and effect, and continue to constitute valid, binding and enforceable covenants, agreements, obligations and liabilities of the Borrower, and (ii) ratifies, confirms and agrees to perform, observe, comply with and be bound by each and every covenant, agreement, term, condition, undertaking, appointment, duty, guarantee, indemnity, debt, liability, obligation, hypothec and security interest contained in, existing under or created by each of this Agreement, the Debenture and the Security Documents.

### 4.3 Additional Security

In addition, the Lender shall have the continuing right to obtain, at its election, such additional security over the assets of the Borrower and any Obligor of the Borrower as it deems necessary or desirable, including guarantees, general security agreements, share pledges or similar security documents granting the Lender a security interest in and to all undertakings, property and assets of the Borrower or such Obligor.

## ARTICLE 5 CONVERSION OF OPERATING LOAN

### 5.1 Conversion of Operating Loan into Class A Shares

(1) Upon and subject to the provisions and conditions of this Article 5, the Lender shall have the right, at its option, at any time after the date hereof and up to and including the Expiry Date to convert the whole or any part of the Aggregate Principal Amount



into 12,255 fully paid and non-assessable Class A Shares for every \$1,000 of the Aggregate Principal Amount outstanding.

- (2) The Lender's right of conversion pursuant to this Article 5 shall extend only to the maximum number of whole Class A Shares into which the Aggregate Principal Amount surrendered for conversion at any one time by the Lender may be converted in accordance with the provisions of Section 5.1(1). Fractional interests in Class A Shares shall be adjusted for in the manner provided below.
- (3) In the case of any reclassification of the Class A Shares at any time outstanding (other than any subdivision or consolidation of Class A Shares into a greater or lesser number of Class A Shares) or change of the Class A Shares into other shares, or in case of a Corporate Reorganization of the Borrower (other than a Corporate Reorganization which does not result in a reclassification of the outstanding Class A Shares or a change of the Class A Shares into other shares), the Lender shall be entitled to receive upon conversion, and shall accept, in lieu of the number of Class A Shares to which it was previously entitled upon such conversion, the kind and amount of shares and other securities or property which the Lender would have been entitled to receive as a result of the Corporate Reorganization if, on the effective date, it had been the registered holder of the number of Class A Shares to which it was previously entitled upon conversion. If necessary, appropriate adjustments shall be made in the application of the provisions set forth in this Article 5 with respect to the rights and interests thereafter of the Lender so that the provisions set forth in this Article 5 shall thereafter correspondingly be made applicable as nearly as may be possible in relation to any shares or other securities or property thereafter deliverable upon the conversion of the Aggregate Principal Amount. Any such adjustments shall be made by and set forth in a supplemental Agreement approved by the board of directors of the Borrower and the Lender and shall for all purposes be conclusively deemed to be an appropriate adjustment.

#### **5.2 Manner of Exercise of Right to Convert to Class A Shares**

The Lender may exercise its rights to convert by sending to the Borrower at its principal address a notice exercising its right to convert in accordance with the provisions of this Article 5. Upon receipt of the notice, the Lender shall be entered in the books of the Borrower as at the date of conversion as the holder of the number of Class A Shares into which the Aggregate Principal Amount or a portion thereof is converted and, as soon as practicable, the Borrower shall deliver to the Lender a certificate or certificates for such Class A Shares and, if applicable, a cheque for any amount payable under Section 5.5.

#### **5.3 Accrued Interest, etc.**

At the time of the conversion, the Lender shall be entitled to receive accrued and unpaid interest on the Aggregate Principal Amount up to but excluding the date of its conversion. Class A Shares issued upon such conversion shall rank only in respect of dividends declared in favour of shareholders of record on and after the date of conversion or such later date as the Lender becomes the holder of record of Class A Shares pursuant to Section 5.2. As of and from the applicable date, the Class

A Shares so issued shall, for all purposes, be and be deemed to be issued and outstanding as fully paid and non-assessable Class A Shares.

#### **5.4 Adjustment of Conversion Price**

- (1) The Conversion Price in effect at any date shall be subject to adjustment from time to time as in this Section 5.4 provided.
- (2) If and whenever the Borrower shall (i) subdivide or redivide the outstanding Class A Shares into a greater number of shares, (ii) reduce, combine or consolidate the outstanding Class A Shares into a smaller number of shares, or (iii) issue any Class A Shares to the holders of all or substantially all of the outstanding Class A Shares by way of a stock dividend (other than any stock dividends constituting dividends paid in the ordinary course) the number of Class A Shares which may be acquired pursuant to Section 5.1 on the date of the subdivision, redivision, reduction, combination or consolidation or on the record date for the issue of Class A Shares by way of a stock dividend, as the case may be, shall be increased, in the case of the events referred to in (i) and (iii) above, in the proportion which the number of Class A Shares outstanding before the subdivision, redivision or dividend bears to the number of Class A Shares outstanding after the subdivision, redivision or dividend, or shall be decreased, in the case of the events referred to in (ii) above, in the proportion which the number of Class A Shares outstanding before the reduction, combination, or consolidation bears to the number of Class A Shares outstanding after the reduction, combination or consolidation. Any issue of Class A Shares by way of a stock dividend shall be deemed to have been made on the record date fixed for the stock dividend for the purpose of calculating the number of outstanding Class A Shares under this Section 5.4(2).
- (3) In the case of any reclassification of, or other change in, the outstanding Class A Shares other than a subdivision, redivision, reduction, combination or consolidation, the number of Class A Shares which may be acquired pursuant to Section 5.1 shall be adjusted in such manner as the board of directors of the Borrower, with the approval of the Lender, determine to be appropriate on a basis consistent with this Section 5.4.
- (4) If any question arises with respect to the adjustments provided in this Section 5.4, such question shall be conclusively determined by a firm of chartered accountants (who may be the Borrower's auditors) appointed by the Borrower and acceptable to the Lender. Such chartered accountants shall be given access to all necessary records of the Borrower and their determination shall be binding upon the Borrower and the Lender.

#### **5.5 No Requirement to Issue Fractional Shares**

The Borrower shall not be required to issue fractional Class A Shares upon the conversion. If any fractional interest in a Class A Share would, except for the provisions of this Article 5, be deliverable upon the conversion of the Aggregate Principal Amount, the Borrower shall, in lieu of delivering any certificate of fractional interest, satisfy the fractional interest by paying to the Lender an amount of lawful money of Canada equal (computed to the nearest whole cent, and one-half

of a cent being rounded up) to the principal amount of the Aggregate Principal Amount remaining outstanding after so much of the principal amount as may be converted into a whole number of Class A Shares has been so converted.

**5.6 Certificate as to Adjustment**

The Borrower shall, from time to time immediately after the occurrence of any event which requires an adjustment or re-adjustment as provided in Section 5.4, deliver a Certificate of the Borrower to the Lender specifying the nature of the event requiring the same and the amount of the necessary adjustment and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based, which certificate and the amount of the adjustment specified therein shall be verified by an opinion of a firm of chartered accountants (who may be the Borrower's auditors) appointed by the Borrower and acceptable to the Lender and, when approved by the Borrower, shall be conclusive and binding on all parties in interest.

**5.7 Notice of Special Matters**

The Borrower shall give notice to the Lender, in the manner provided in Article 12, of its intention to fix a record date for any event mentioned in Section 5.4 which may give rise to an adjustment in the number of Class A Shares which may be acquired pursuant to Section 5.1, and, in each case, the notice shall specify the particulars of the event and the record date and the effective date for the event; provided that the Borrower shall only be required to specify in the notice such particulars of the event as shall have been fixed and determined on the date on which such notice is given. Such notice shall be given not less than 14 days prior to the applicable record date.

**5.8 Borrower to Reserve Shares**

The Borrower shall at all times reserve and keep available out of its authorized Class A Shares and solely for the purpose of conversion as in this Article 5 provided, and conditionally allot to the Lender, such number of Class A Shares as shall then be issuable upon the conversion. The Borrower covenants with the Lender that all Class A Shares which shall be so issuable shall be duly and validly issued as fully-paid and non-assessable.

**ARTICLE 6  
INCREASED COSTS**

**6.1 Changes in Law**

- (1) If, after the date hereof, due to either:
  - (a) the introduction of, or any change in, or in the interpretation of any Law resulting in the imposition or increase of reserves, deposits or similar requirements by any central bank or Governmental Authority charged with the administration thereof; or

- (b) the compliance with any guideline or request from any central bank or other Governmental Authority which the Lender, acting reasonably, determines that it is required to comply with, there will be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining the amounts funded under this Agreement, or there will be any reduction in the effective return to the Lender thereunder, then, subject to Section 6.1(2) the Borrower will, within five (5) Business Days after being notified by the Lender of such event, pay to the Lender monthly in arrears, that amount (the "Additional Compensation") which the Lender, acting reasonably, determines will compensate it, after taking into account all applicable taxes, for any such increased costs or reduced returns incurred or suffered by the Lender.
- (2) If Additional Compensation is payable pursuant to the above paragraph, the Borrower will have the option to prepay any amounts of the Aggregate Principal Amount owned to the Lender, subject to provisions herein.

## 6.2 Changes in Circumstances

Notwithstanding anything to the contrary herein or in any of the other Credit Documents contained, if on any date the Lender determines in good faith, which determination will be conclusive and binding on the parties, and provided notice is given to the Borrower that its ability to maintain, or continue to offer any amounts advanced under this Agreement has become unlawful or impossible due to any change in applicable Laws, or in the interpretation or administration thereof by authorities having jurisdiction in the matter, then in any such case, subject to the Lender's rights under Article 5, the Borrower will forthwith repay to the Lender all principal amounts affected thereby, together with all unpaid interest accrued thereon to the date of repayment and all other expenses incurred in connection with the termination of any such Borrowing.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties

The Borrower represents and warrants to the Lender as of the date hereof as follows and acknowledges that the Lender is relying upon such representations and warranties in connection with the entering into of this Agreement and that the Lender would not have entered into this Agreement without such representations and warranties:

- (a) *Due Incorporation*

The Borrower and each Subsidiary:

- (i) except as set out in the Disclosure Schedule, is duly incorporated, existing and in good standing under the Laws of the jurisdiction of its incorporation; and

- (ii) has all necessary corporate power and authority to own, lease and operate the Assets and conduct the Business as and in the places where such Assets are now owned, leased or operated or such Business is now conducted.

(b) *Due Authorization*

The Borrower and each of the Obligors have the necessary corporate power and authority to execute this Agreement and the other Credit Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution of this Agreement and the other Credit Documents to which it is a party by the Borrower and each of the Obligors and the performance by the Borrower and each of the Obligors of its obligations hereunder and thereunder has been duly authorized by all necessary action on its part. Such execution and performance by the Borrower and each of the Obligors does not require any action or consent of, any registration with, or notification to, any Person, or any action or consent under any Laws to which the Borrower or each of the Obligors is subject.

(c) *Enforceability*

The Agreement and each other Credit Document to which it is a party will constitute upon execution a legal, valid and binding obligation of the Borrower and each of the Obligors enforceable against them in accordance with their terms subject to applicable bankruptcy, insolvency, reorganization and similar Laws affecting the enforcement of creditors rights generally and to general equitable principles.

(d) *Authorized and Issued Capital*

The issued shares of the Borrower have been duly issued and are outstanding as fully paid and non-assessable. All of the shares of the Borrower have been issued in compliance with all applicable laws including, without limitation, applicable securities laws. The authorized and issued capital of the Borrower and each of the Borrower's Subsidiaries is as set out in the Disclosure Schedule.

(e) *Subsidiaries*

The Borrower has no Subsidiaries or affiliates except those Subsidiaries set forth in Exhibit "C" to the Debenture. The Borrower represents, warrants and covenants that all of the Non-Material Subsidiaries do not, and will not, carry on any active business nor do they, or will they, possess any material assets or material liabilities.

(f) *No Conflict*

Except as set out in the Disclosure Schedule, the execution of the Agreement and the other Credit Documents, the consummation of the transactions contemplated herein

and therein, the performance by the Borrower and the Obligors of its obligations hereunder and thereunder do not:

- (i) violate, contravene or breach, or constitute a default under, the constating instruments or by laws of the Borrower or its Subsidiaries;
- (ii) except as set forth in the Disclosure Schedule, result in the breach or violation of, or conflict with, or allow any other Person to exercise any rights under, any Contracts to which the Borrower or the Obligors are a party;
- (iii) with respect to the consummation of the transactions contemplated by this Agreement and each of the other Credit Documents, result in a breach of, or cause the termination or revocation of, any License necessary to the ownership of the Assets or the operation of the Business;
- (iv) result in, or require the creation of any Lien upon any of the Assets or the Business; or
- (v) violate, contravene or breach any Laws.

(g) *Books and Records*

Except as set out in the Disclosure Schedule, the Books and Records are complete and accurate in all material respects and all corporate proceedings and actions reflected in the Books and Records have been conducted or taken in compliance with all applicable Laws and with the articles and by-laws of the Borrower and its Subsidiaries.

(h) *No Options, etc.*

There is no agreement which grants to any Person the right to purchase or otherwise acquire any Assets of the Borrower or any of its Subsidiaries. No Person has any written or oral agreement, options or warrants or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for the purchase, subscription, allotment or issuance of any securities of the Borrower or any of its Subsidiaries.

(i) *Financial Statements*

The Financial Statements fairly, accurately and completely present and disclose in all material respects (i) the assets, liabilities and obligations (whether accrued, contingent, absolute or otherwise), income, losses, retained earnings, reserves and financial position of the Business and (ii) the results of operations of the Business.

(j) *Authorizations*

The Borrower and its Subsidiaries own, hold, possess or lawfully use in the operation of the Business all Authorizations which are in any manner necessary for them to conduct the Business as presently or previously conducted or for the ownership and use of the Assets, free and clear of all Liens save and except for Permitted Encumbrances and in compliance with all Laws applicable thereto. Each Authorization is valid, subsisting and in good standing, the Borrower or its Subsidiary, as applicable, is not in default or breach of any Authorization and, no proceeding is pending or, to the knowledge of the Borrower, threatened to revoke or limit any Authorization.

(k) *Required Consents*

In respect of the Agreement or any other Credit Document, there is no requirement to obtain any consent, approval or waiver of a party under any lease or any Contract to which the Borrower or any Subsidiary is a party to any of the transactions contemplated by this Agreement or any other Credit Document, except for the consents, approvals and waivers set forth in the Disclosure Schedule.

(l) *Title to Assets*

The Borrower and its Subsidiaries own (with good title) all of the properties and assets (whether real, personal or mixed and whether tangible or intangible) that they purport to own including all properties and assets reflected as being owned by the Borrower and its Subsidiaries in their financial Books and Records. The Borrower and its Subsidiaries have legal and beneficial ownership of the Assets free and clear of all Liens (except for the Permitted Encumbrances). No other Person owns any property or assets which are being used in the Business except for the property and assets set forth in the Disclosure Schedule.

(m) *Condition of Assets*

All of the tangible Assets are (i) in good operating condition and repair, ordinary wear and tear excepted and (ii) not in need of maintenance or repairs (except ordinary or routine maintenance or repairs that are not material in nature or costs, individually or collectively).

(n) *Inventory (Spare Parts)*

The spare parts inventory of the Borrower and its Subsidiaries is good and usable, subject to a reasonable allowance for obsolete inventory consistent with the allowances reflected in the Financial Statements. The inventory levels of the Borrower and its Subsidiaries have been maintained at levels sufficient for the continuation of the Business in the ordinary course. All inventories of the Borrower

and its Subsidiaries have been determined and valued in accordance with policies, practices and procedures consistent with industry practice.

(o) *Intellectual Property Rights*

The Disclosure Schedule contains a true and complete list of all registered Intellectual Property Rights used by Borrower and its Subsidiaries in connection with the Business (other than "shrink wrap" licenses for standard off-the-shelf software). Each of the aforesaid Intellectual Property Rights is valid, subsisting and enforceable and each such Intellectual Property Right is duly recorded in the name of the Borrower or a Subsidiary, and the Borrower or a Subsidiary, as the case may be, is the absolute owner and has the sole and exclusive right to hold and use such Intellectual Property Rights without making any payment to others or granting rights to others in exchange.

(p) *Real Property Leases*

The Disclosure Schedule contains is a true and complete list of all real property leases to which the Borrower or its Subsidiary is party. All such leases are in good standing and in full force and effect without amendment thereto, and the Borrower or its Subsidiary, as applicable, is entitled to all benefits under such leases.

(q) *Owned Real Property*

The Borrower and its Subsidiaries have good and marketable title to the Owned Real Properties free and clear of all Liens except for Permitted Encumbrances. Neither the Borrower nor any of its Subsidiaries is the owner of, or subject to any agreement or option to own, any real property or any interest in any real property, other than the Owned Real Properties. All of the Buildings and Fixtures on the Owned Real Properties were constructed in accordance with all applicable Laws and the Borrower or its Subsidiary, as applicable, has adequate rights of ingress and egress into the Owned Real Properties for the operation of the Business in the ordinary course.

(r) *Material Contracts*

The Disclosure Schedule sets forth a true and complete list of all the following types of written or oral Contracts to which the Borrower or any of its Subsidiaries is a party:

- (i) any distributor, sales, advertising, agency or manufacturer's representative Contract;



- (ii) any continuing Contract for the purchase of materials, supplies, equipment or services involving in the case of any such Contract more than \$250,000 over the life of the Contract;
  - (iii) any Contract that expires or may be renewed at the option of any Person other than the Borrower or its Subsidiary, as applicable, so as to expire more than one year after the date of this Agreement;
  - (iv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, interest rate, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;
  - (v) any Contract for capital expenditures in excess of \$100,000 in the aggregate;
  - (vi) any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of the Borrower or any of its Subsidiaries to engage in any line of business, compete with any other Person, solicit any Persons for any purpose, operate its assets at maximum production capacity or otherwise conduct its business;
  - (vii) any Contract pursuant to which the Borrower or any of its Subsidiaries is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
  - (viii) any Contract with any Person with whom the Borrower or any of its Subsidiaries does not deal at arm's length within the meaning of the *Income Tax Act* (Canada);
  - (ix) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;
  - (x) any Contract in respect of the Intellectual Property Rights owned by, licensed to or used by the Borrower or any of its Subsidiaries;
  - (xi) any Contract made out of the ordinary course of business; or
  - (xii) any Contract that is material to the Business.
- (s) *Insurance*

The Borrower and its Subsidiaries maintain insurance with responsible and reputable insurers in such amounts and covering such risks and with such deductibles as are generally maintained by like businesses. The coverage under each

such policy is in full force and effect and the Borrower and its Subsidiaries are in good standing under such policies.

The Borrower and its Subsidiaries have not received notice of, and the Borrower has no knowledge of, any fact, condition or circumstance which might reasonably form the basis of any claim against the Borrower or any of its Subsidiaries which (i) is not fully covered by insurance (subject to deductibles) maintained by or for the Borrower and its Subsidiaries, or (ii) would result in any increase in insurance premiums payable by the Borrower or its Subsidiaries.

(t) *Litigation*

Except as set forth in the Disclosure Schedule, there are (i) no actions, claims, investigations, arbitrations, and other proceedings pending, or to the knowledge of the Borrower, threatened against, with respect to, or affecting in any manner, the Borrower, its Subsidiaries, or the Assets and which, if brought against the Borrower or its Subsidiaries, would have a material adverse effect on the Borrower, its Subsidiaries or the Business; (ii) no notices of deficiency involving possible exposure to the Borrower or its Subsidiaries of greater than \$100,000 in connection with the Business or the Assets and which, if brought against the Borrower or its Subsidiaries, would have a material adverse effect on the Borrower, its Subsidiaries or the Business; and (iii) no outstanding judgments, orders decrees, writs, injunctions, decisions, rulings or awards against, with respect to, or in any manner affecting any of the Assets.

(u) *No Default Under Contracts*

The Borrower and its Subsidiaries (i) are in good standing and entitled to all benefits under, (ii) have performed all obligations required to be performed under, and (iii) are not in default under, or in breach of, any Contracts other than, in the case of (ii) and (iii), any non-performance, default or breach which would not have a material adverse effect on the Business. No other party to such Contracts is in default or breach thereof and there exists no fact, condition or circumstances which, after notice or lapse of, time or both, would result in the default or breach thereof by any such other party.

(v) *Licenses*

The Borrower and its Subsidiaries have, and is in full compliance with and entitled to all of the benefits under, all Licenses necessary or required to conduct the Business as presently conducted. Neither the Borrower nor any Subsidiary has received notice of any event inquiry, investigation or proceeding threatening the

validity of such Licenses. All material Licenses are set forth in the Disclosure Schedule.

No fact, condition or circumstance has occurred to create, and the execution of this Agreement and its performance shall not create, any right to terminate, cancel, modify, amend, revoke or expire any License.

(w) *Employee Matters*

The Borrower and its Subsidiaries have complied with all applicable Laws relating to employment matters, including, without limitation, any provisions thereof relating to wages and hours.

The Disclosure Schedule sets forth a true and complete list of all Employees as of date of the Agreement and a true and complete list of all written employment, service, agency, consulting, termination and severance Contracts entered into by the Borrower or any of its Subsidiaries or for any or all of their present Employees. Except as set out in the Contracts therein referred to, there are no Employees who are entitled to a specified notice of termination or fixed term of employment or who cannot be dismissed upon such notice as is required by Law.

(x) *Benefit Plans*

Except as set forth in the Disclosure Schedule, neither the Borrower nor any of its Subsidiaries is a party to any pension, retirement, bonus, profit sharing, compensation, incentive, stock purchase, stock option, stock appreciation, severance, change of control, savings, thrift, insurance, medical, hospitalization, disability, death or other similar program, or practice providing director, officer or employee benefits (the "Benefit Plans").

There are no outstanding defaults or violations by the Borrower or any of its Subsidiaries of any payment obligation required to be performed by them in connection with any Benefit Plan. There are no actions, claims, investigations, arbitrations or other proceedings which are pending or, to the knowledge of the Borrower, threatened with respect to the Benefit Plans (other than routine claims for benefits or in respect of Benefit Plans administered by an entity unrelated to the Borrower or its Subsidiaries) against the Borrower or any of its Subsidiaries, the funding agent or the fund of such Benefit Plan. No proceeding has been initiated to terminate any Benefit Plan.

(y) *Unions, Collective Agreements*

No collective agreement is currently being negotiated by the Borrower or any other Person in respect of Employees of the Borrower and its Subsidiaries and the only collective agreements in force with respect to the Employees of the Borrower and its Subsidiaries are the Collective Agreements listed in the Disclosure Schedule. There are no Contracts with any employee associations in respect of the Employees of the Borrower or its Subsidiaries. There are no grievances or arbitration proceedings under the Collective Agreements, there are no written or oral agreements or course of conduct which modify the terms of the Collective Agreements and the Borrower has not committed any breaches of its obligations under the Collective Agreements.

Other than the Collective Agreements, no trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees of the Borrower or its Subsidiaries by way of certification, interim certification, voluntary recognition, or succession rights, or has applied or, to the knowledge of the Borrower, threatened to apply to be certified as the bargaining agent of any Employees of the Borrower or any of its Subsidiaries.

(z) *Environmental Matters*

Except as set forth in the Disclosure Schedule, the Borrower and each of its Subsidiaries have at all times conducted, held and used, and are continuing to conduct, hold and use, their affairs, business and properties in connection with the Business in material compliance with all Environmental Laws (including Environmental Permits).

Except as set forth in the Disclosure Schedule, at no time have any contaminants been released, emitted, discharged, deposited, issued, sprayed, injected, abandoned, buried, spilled, incinerated, disposed, leaked, poured, emptied, dumped, or placed on, in, under or adjacent by the Borrower or any of its Subsidiaries to any real property owned, or used or leased by the Borrower or any of its Subsidiaries in connection with the Business other than in material compliance with Environmental Laws.

(aa) *Taxes*

The Borrower and each of its Subsidiaries have paid all Taxes which are due and payable within the time required by applicable Law, and have paid all assessments and reassessments they have received in respect of Taxes. The Borrower and each of its Subsidiaries have made full and adequate provision in the Books and Records and Financial Statements for all Taxes which are not yet due and payable but which relate to periods ending on or before the date hereof. Neither the Borrower nor any of its Subsidiaries have received any refund of Taxes to which they are not entitled. There are no claims, actions, suits, audits, proceedings, investigations or other action pending or threatened against the Borrower or any of its Subsidiaries in respect of Taxes and, to the knowledge of the Borrower, there is no reason to expect that any

such claim, action, suit, audit, proceeding, investigation or other action may be asserted against the Borrower or any of its Subsidiaries by a governmental entity.

(bb) *Compliance with Laws*

To the best of its knowledge, the Borrower and its Subsidiaries have complied and continue to comply with all Laws.

(cc) *No Unusual Transactions*

Since September 30, 2008, the Borrower and its Subsidiaries have conducted their business in the ordinary course and, without limiting the generality of the foregoing, have not:

- (i) ceased to operate their properties and to carry on their business as heretofore carried on nor has the Borrower and its Subsidiaries failed to maintain all of its properties, rights and assets consistently with past practices;
- (ii) made any change in the rate or form of compensation or remuneration payable or to become payable to any of its Employees;
- (iii) granted to any customer any special allowance or discount, or changed its pricing, credit or payment policies, other than in the ordinary course of business;
- (iv) suffered any extraordinary losses whether or not covered by insurance;
- (v) suffered any material cessation or interruption of ordinary services;
- (vi) modified or changed its business organization or its relationship with its suppliers, customers and others having business relations with it; or
- (vii) authorized, agreed or otherwise committed to any of the foregoing.

(dd) *Full Disclosure*

The Borrower has made or caused to be made due inquiry with respect to (i) each representation and warranty contained in this Agreement, (ii) the Disclosure Schedule annexed hereto, and (iii) any certificates or other documents referred to

herein or furnished to the Lender pursuant hereto, and none of the aforesaid representations, warranties, Disclosure Schedule, certificates or documents contains any untrue statement of a material fact.

(ee) *Competition Act*

For the purposes of s. 110(3) of the *Competition Act* (Canada), each of (i) the total value of the Borrower's assets in Canada plus the assets in Canada that are owned by corporations that are controlled by the Borrower and (B) the gross revenues from sales in or from Canada generated from the assets referred to in (i) above, measured in accordance with the *Competition Act* (Canada), do not exceed CDN\$70 million or such other amount as is determined pursuant to ss. 110(8) and 110(9) of the *Competition Act* (Canada)

(ff) *Investment Canada Act*

Neither the Borrower nor its Subsidiaries provides any of the services, or engages in any of the activities of a "cultural business" within the meaning of section 14.1(6) of the *Investment Canada Act*.

**7.2 Survival**

The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive and shall continue in full force and effect so long as any amounts are owing by the Borrower to the Lender under this Agreement.

**ARTICLE 8  
INDEMNIFICATION**

**8.1 Indemnification by the Borrower**

The Borrower shall indemnify and hold the Lender harmless from and against any claims, demands, actions, causes of action, judgments, damages, losses (which shall include any diminution in value), liabilities, costs or expenses (including, without limitation, interest, penalties and reasonable attorneys, and experts, fees and disbursements) (collectively, the "Losses") which may be made against the Lender or which it may suffer or incur as a result of, arising out of or relating to any incorrectness in, or breach of, any representation or warranty made by the Borrower in the Debenture, in Article 7 hereof, the Disclosure Schedule annexed hereto or in any certificate or other document delivered or given pursuant to the Agreement.

## 8.2 Obligation to Reimburse

The Borrower (the "Indemnifying Party") shall reimburse, on demand, to the Lender (the "Indemnified Party") the amount of any Losses suffered or incurred by the Indemnified Party, the whole as of the date that the Indemnified Party incurs any such Losses, together with interest thereon from the aforesaid date until payment in full at the rate per annum equal to the prime rate of the Canadian Imperial Bank of Commerce, as adjusted from time to time.

## 8.3 Notification

Promptly upon obtaining knowledge thereof, the Indemnified Party shall notify the Indemnifying Party of any cause which the Indemnified Party has determined has given or could give rise to indemnification under this Article 8. The omission so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any duty to indemnify and hold harmless which otherwise might exist with respect to such cause unless (and only to that extent) the omission to notify materially prejudices the ability of the Indemnifying Party to exercise its right to defend provided in this Article 8.

## 8.4 Defense of Third Party Claim

If any legal proceeding shall be instituted or any claim or demand shall be asserted by a third party against the Indemnified Party (each a "Third Party Claim"), then the Indemnifying Party shall have the right, after receipt of the Indemnified Party's notice under Section 8.3 herefo and upon giving notice to the Indemnified Party within 30 calendar days of such receipt, to defend the Third Party Claim at its own cost and expense with counsel of its own selection, provided that:

- (a) the Indemnified Party shall at all times have the right to fully participate in the defense at its own expense;
- (b) the Third Party Claim seeks only monetary damages and does not seek any injunctive or other relief against the Indemnified Party;
- (c) the Indemnifying Party unconditionally acknowledges in writing its obligation to indemnify and hold the Indemnified Party harmless with respect to the Third Party Claim; and
- (d) legal counsel chosen by the Indemnifying Party is satisfactory to the Indemnified Party, acting reasonably.

Amounts payable by the Indemnifying Party pursuant to a Third Party Claim shall be paid in accordance with the terms of the settlement or, the judgment, as applicable, but in any event prior to the expiry of any delay for a judgment to become executory.

**8.5 No Compromise**

The Indemnifying Party shall not compromise and settle or to cause a compromise and settlement of any Third Party Claim, without the prior written consent of the Indemnified Party, unless:

- (a) the terms of the compromise and settlement require only the payment of money and do not require the Indemnified Party to admit any wrongdoing or take or refrain from taking any action; and
- (b) the Indemnified Party receives, as part of the compromise and settlement, a legally binding and enforceable unconditional satisfaction or release, which is in form and substance satisfactory to the Indemnified Party, acting reasonably, from any and all obligations or liabilities it may have with respect to the Third Party Claim.

**8.6 Failure to Defend**

If the Indemnifying Party fails:

- (a) within 30 calendar days from receipt of the notice of a Third Party Claim to give notice of its intention to defend the Third Party Claim in accordance with Section 8.4 hereof, or
- (b) to comply at any time with any of Sections 8.4(c) or 8.4(d) hereof,
- (c) then the Indemnifying Party shall be deemed to have waived its right to defend the Third Party Claim and the Indemnified Party shall have the right (but not the obligation) to undertake or to cause to undertake the defense of the Third Party Claim and compromise and settle the Third Party Claim on behalf, for the account and at the risk and expense of the Indemnifying Party.

**8.7 Survival of Indemnification**

The obligation of indemnification set forth herein shall survive the completion of the transactions contemplated in the Agreement, provided, however, that as a condition to the exercise of the right to be indemnified under Section 8.1 hereof, the Indemnified Party shall have given written notice thereof to the Indemnifying Party within 36 months from the date of this Agreement, except:

- (a) for any claim made in respect of Section 7.1(a), Section 7.1(b), Section 7.1(c), Section 7.1(d), Section 7.1(e) and Section 7.1(f), which claim may be made at any time;
- (b) for any claim made in respect of Section 7.1(aa), which claim may be made within 6 months after the expiration of the tax assessment period;
- (c) for any claim made in respect of Section 7.1(z), which claim may be made within 6 years from the date of the Agreement; and



- (d) for any claim based on fraud or fraudulent misrepresentation by the Borrower, which claim may be made at any time.

## ARTICLE 9 COVENANTS OF THE BORROWER

### 9.1 General Covenants

Unless otherwise agreed between the Borrower and the Lender (or its predecessors in title), the Borrower declares, covenants and agrees to the matters provided for below:

- (a) *To Pay Principal and Interest*

The Borrower will duly and punctually pay the principal and interest accrued under this Agreement or any other Credit Document at the time and in the manner specified herein.

- (b) *Maintain Corporate Existence*

The Borrower shall, and shall cause each of the Subsidiaries to, maintain its corporate existence and carry on and conduct its business in a proper and business-like manner, take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business and comply with all applicable legal requirements.

- (c) *No Encumbrances*

Neither the Borrower nor any of the other Obligors shall create, assume or suffer to exist any Lien (other than Permitted Encumbrances), including, without limitation, any agreement to give any of the foregoing or any conditional sale or other title retention agreement, upon all or any part of the Secured Property. The Borrower will defend the Secured Property against, and will take such other action as is necessary to remove, any and all security interests on and claims in respect of the Secured Property which ranks ahead of, or *pari passu* with, the security granted to the Lender to secure the Obligations other than the security interests created by the Security Documents and Permitted Encumbrances, and the Borrower will defend the right, title and interest of the Lender in and to the Secured Property against the claims and demands of all Persons.

- (d) *Insurance*

The Borrower and each of the other Obligors shall insure and keep insured its properties customarily insured by companies carrying on a similar business in similar locations, or owning or operating similar properties, against all risks, including but not limited to business interruption insurance.

(e) *Non-arm's Length Transactions*

Neither the Borrower nor any of the other Subsidiaries shall enter into any material transaction with any officer, director, employee, shareholder or any Person not dealing at arm's length (within the meaning of the *Income Tax Act* (Canada)) or any affiliate of any of the foregoing, specifically excluding (a) any employment, and (b) any transaction for which prior written evidence, satisfactory to the Lender, is provided that such transaction will be on terms equal to or greater than fair market value.

(f) *Financial Information*

The Borrower shall prepare and deliver (on a consolidated basis) to the Lender:

- (i) within 15 days of the end of each month, monthly accounts receivable, accounts payable and deferred revenue (with aging);
- (ii) within 45 days of the end of each month and fiscal quarter, monthly and quarterly financial statements;
- (iii) within 45 days after the end of each quarter, a description of recent events, and a brief description of the business prospects of the Borrower
- (iv) within 45 days of the end of each fiscal year, annual internally prepared financial statements;
- (v) when so prepared and in any event no later than their receipt by the Borrower's Board of Directors or any Committee thereof, audited annual financial statements and annual operating budgets/projections; and
- (vi) such other financial documents and reports as reasonably requested by the Lender from time to time.

Such statements shall be accompanied by a certificate of the Chief Executive Officer or Chief Financial Officer to the effect that the statements are prepared in accordance with GAAP, all statutory withholdings have been properly made and there is no default under this Agreement and/or under any other senior loan. Additionally, if the Borrower undertakes reporting requirements to the lenders under any other borrowing arrangement, the Lender shall also contemporaneously receive copies of all reporting materials sent to such lenders.

(g) *Negative Covenants*

Without the prior written consent of the Lender, the Borrower shall not and shall cause the Subsidiaries to not:

- (i) incur, issue or make any request for or permit to exist Debt except for the Permitted Debt;
- (ii) grant or permit the existence of any security for Debt other than the Permitted Encumbrances;
- (iii) sell or dispose of the Business of the Borrower or any material part thereof or wind-up or liquidate the Borrower or any other Obligor with material assets or liabilities pursuant to any transaction where the repayment of the Obligations is not provided for;
- (iv) merge, amalgamate or enter into another form of business combination other than with any Subsidiary wholly-owned by the Borrower;
- (v) create, acquire or permit to exist any subsidiary of the Borrower or its Subsidiaries that has not provided a guarantee and Security Documents to the benefit of the Lender (other than in respect of the Non-Material Subsidiaries and the Restricted Entities, subject to 9.1(q) hereof);
- (vi) purchase or acquire the assets of any Person or any shares, partnership interests or other similar interests in any Person by any means whatsoever other than purchases in the ordinary course of business and acquisitions directly within the Borrower's domain of expertise;
- (vii) make any payment of any dividend and/or other distribution to any shareholder of the Borrower save and except for the payment of services rendered in connection with existing bona fide employment or consultant agreements;
- (viii) continue the Borrower or any Subsidiary into a jurisdiction in which it is not currently organized or incorporated or establish any Subsidiary in a manner which may prejudice the Lender or could potentially be materially adverse to the Lender as determined by the Lender in its sole discretion, acting reasonably;
- (ix) make any prepayments of any debt that is subordinated to or *pari passu* with the Obligations
- (x) make any amendment to the articles or by-laws of the Borrower or any Subsidiary in a manner which may prejudice the Lender or could potentially be materially adverse to the Lender as determined by the Lender in its sole discretion, acting reasonably;

(xi) provide or permit a guarantee in respect of the obligations of any Person, other than guarantees given in respect of indebtedness secured by a Permitted Encumbrance or in respect of a Permitted Debt; or

(xii) agree or otherwise commit to take any action described in paragraphs (i) - (xi) above.

(h) *Further Documentation*

The Borrower will from time to time at its expense promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Lender may reasonably request for the purpose of preserving the Secured Property, and full benefits of, and the rights and powers granted by, the Security Documents (including the filing of any financing statements or financing change statements under any applicable legislation, application for the registration or an application for the registration of a rectification with respect to the Secured Property). The Borrower acknowledges that the Security Documents have been prepared based on the existing laws in the Province of British Columbia and that a change in such laws may require the execution and delivery of different forms of security documentation. Accordingly, the Borrower agrees that the Lender will have the right to require that the Security Documents be amended, supplemented or replaced, and that the Borrower will immediately on request by the Lender 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 Borrower merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Lender security interests similar to, and having the same effect as, the security interests created by the Security Documents.

(i) *Delivery and Pledge of Certain Collateral*

Upon the occurrence and during the continuance of any Event of Default, promptly upon request from time to time by the Lender, the Borrower will deliver (or cause to be delivered) to the Lender, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Lender may reasonably request, any and all instruments, securities, documents of title and chattel paper included in or relating to the Secured Property as the Lender may specify in its request (other than Secured Property to which the holder of a Permitted Encumbrance holds a prior ranking charge).

(j) *Payment of Expenses; Indemnification*

The Borrower will pay within 30 days of demand therefor, and will indemnify and save the Lender harmless from, any and all liabilities, reasonable costs and expenses (including reasonable legal fees and expenses 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 Lender in the enforcement of the Security Documents, (ii) with respect to, or resulting from, any failure or delay by the Borrower in performing or observing any of its obligations under the Security Documents, or (iii) incurred by the Lender in performing or observing any of the other covenants of the Borrower under the Security Documents.

(k) *Maintenance of Records*

The Borrower will keep and maintain (or will cause the Subsidiaries to keep and maintain) accurate and complete records of the Secured Property.

(l) *Right of Inspection*

The Lender may, at any time during normal business hours, upon reasonable notice, without charge, examine all books and records evidencing or relating to the Secured Property, and may discuss the affairs, finances and accounts of the Borrower (taken as a whole) with its officers and accountants in the presence of such representatives of the Borrower as the Borrower may designate. The Lender may also, upon reasonable notice, without charge, enter the premises of the Borrower or any of its Subsidiaries where any of the Secured Property is located for the purpose of inspecting the Secured Property, observing its use or otherwise protecting its interests in the Secured Property. The Borrower, at its expense, will provide the Lender with such clerical and other assistance as, may be reasonably requested by the Lender to exercise any of its rights under this paragraph.

(m) *Limitations on Dispositions of Collateral*

Other than in the ordinary course of business, the Borrower will not, without the Lender's prior written consent, sell, lease or otherwise dispose of any of the Secured Property, except that inventory may be sold, leased or otherwise disposed of, equipment may be replaced that is obsolete or requires replacement and accounts may be collected. Following the occurrence and during the continuance of any Event of Default, all proceeds of the Secured Property (including all amounts received in respect of accounts receivable), whether or not arising in the ordinary course of the Borrower's business (taken as a whole), will be received by the Borrower or applicable Subsidiary as trustee and agent of the Lender and will be immediately paid over to the Lender

(n) *Compliance with Laws, etc.*

The Borrower will comply and cause each of its Subsidiaries to comply with the requirements of all applicable laws, judgments, orders, decisions and awards.

(o) *Notices*

The Borrower will provide thirty (30) days notice to the Lender in accordance with Section 12.4 hereof, of (i) any security interest (other than the security interests created by the Security Documents and Permitted Encumbrances) on, or claim asserted against, any of the Secured Property, (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 Secured Property, including the commencement of any legal or administrative proceedings against it which, if there is a material possibility of an adverse determination and if so adversely determined against it, could reasonably be expected to have a Material Adverse Effect, (iii) any change in the location the chief executive office of the Borrower, (iv) any change in the location of any of the corporeal or tangible material Secured Property (including additional locations), and (v) any material loss of or damage to any of the Secured Property and (vi) any Change of Control.

(p) *Limitations on Modifications, Waivers, Extensions*

Other than in the ordinary course of business, the Borrower or any Subsidiary will not (i) amend, modify, terminate or waive any provision of any permit, contract or any agreement giving rise to an account owing to the Borrower or such Subsidiary, as the case may be, in any manner which is or could reasonably be expected to be materially adverse to the Borrower or such Subsidiary, as the case may be, or the Lender or (ii) fail to exercise promptly and diligently its rights under each contract and each agreement giving rise to an account owing to the Borrower or such Subsidiary, as the case may be, if such failure is or could reasonably be expected to be materially adverse to the Borrower or such Subsidiary, as the case may be, or the Lender.

(q) *Restricted Entities*

To the extent that any or all of the Restricted Entities have no restrictions or have the restrictions removed from granting guarantees and security in favour of the Lender, the Borrower shall cause each such Restricted Entity to execute a guarantee and grant a first priority security interest (subject to a Permitted Encumbrance as defined in paragraph (i) of the definition of Permitted Encumbrance) in the property and assets of each such Restricted Subsidiary in favour of the Lender on similar terms as the guarantees and Security Documents executed by the existing Obligor, within thirty (30) days.

**ARTICLE 10  
EVENTS OF DEFAULT**

**10.1 Events of Default**

Any of the following shall constitute an Event of Default under this Agreement:

- (a) failure by the Borrower to pay in cash all or any part of the Obligations when due and payable;
- (b) the Borrower or any Subsidiary (other than for the Non-Material Subsidiaries) ceases to carry on business or any material part of its business in the normal course;
- (c) the Borrower or any Subsidiary becomes insolvent, meaning that:
  - (i) the Borrower or any Subsidiary becomes unable to satisfy its liabilities as they become due; and/or
  - (ii) the realizable value of the Borrower's assets (taken as a whole) is less than the aggregate sum of its liabilities;
- (d) the Borrower or any Subsidiary, any creditor of the Borrower or any Subsidiary or any other Person institutes any proceeding or takes any corporate action or executes any agreement in connection with the commencement of any proceeding:
  - (i) seeking to adjudicate the Borrower or any Subsidiary a bankrupt or insolvent;
  - (ii) seeking liquidation, dissolution, winding-up, reorganization, arrangement, protection, relief or composition of the Borrower or any Subsidiary or any material part of its property or debt, or making a proposal with respect to the Borrower under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
  - (iii) seeking appointment of a receiver, trustee, agent, custodian or other similar official for the Borrower or any Subsidiary or for any material part of its properties and assets or for any part of the Secured Property;
- (e) any creditor of the Borrower or any Subsidiary, or any other Person privately appoints a receiver, trustee or similar official for any material part of the properties or assets of the Borrower or any Subsidiary;
- (f) any execution, distress or other enforcement process, whether by court order or other formal proceeding becomes enforceable (it being acknowledged and agreed that the making of a demand by a third party without court or other

formal sanction shall not in itself constitute an Event of Default hereunder) against any material property of the Borrower or any Subsidiary which could have a Material Adverse Effect;

- (g) the occurrence of any default, or any event or condition which, with the giving of notice or passage of time, or both, would constitute a material default by the Borrower or any Subsidiary under the terms of any other Debt permitted in accordance with the terms hereof and such default is continuing for a period of five (5) Business Days after the Borrower or such Subsidiary receives notice thereof;
- (h) if any material representation or warranty made by the Borrower or any Obligor to the Lender in the Credit Documents is materially untrue or incorrect as of the date on which it is made;
- (i) the Borrower or any Obligor fails to observe, in any material respect, any other term, covenant or agreement contained in the Credit Documents (including the failure to preserve the ranking of the security interest created by the Security Documents) and such failure is continuing two (2) Business Days after notice by the Lender to the Borrower;
- (j) with respect to Debt of the Borrower or any Subsidiary under any agreement with a third party (other than agreements entered into with customers in the ordinary course of business), the Borrower or such Subsidiary fails to pay any principal, interest or other amount pursuant to such agreement when such amount becomes due and payable (whether by scheduled maturity, required repayment, acceleration, demand or otherwise) and such failure, with the giving of notice or passage of time, or both, would constitute a default by the Borrower or such Subsidiary under such agreement, other than the extension of the payment of trade and accounts payable in the ordinary course consistent with the Borrower's or such Subsidiary's past practice, provided such extension does not result in a Material Adverse Effect;
- (k) a notice is sent to or received by the Borrower or any Subsidiary from any creditor with respect to the intention of such creditor to enforce its Lien on any of the property of the Borrower or such Subsidiary unless such notice is being contested in good faith by appropriate legal proceedings and such notice has not resulted in, or does not involve, any immediate prospect of the sale or forfeiture or loss of any of the property of the Borrower or such Subsidiary that is subject to such notice;
- (l) the Borrower or any Obligor challenges the validity or enforceability of any of the Credit Documents or terminates or repudiates any of them or attempts to do so;
- (m) any occurrence, development or change (other than an occurrence, development or change to which the Lender consents), which would result in



the Credit Documents ceasing to have priority over all other Debt of the Borrower and the Obligors other than the Permitted Encumbrances;

- (n) the occurrence of any Change of Control;
- (o) any holder of any Lien enforces against, delivers any notices relating to its rights or its intention to enforce against, or becomes entitled to enforce against, or otherwise takes possession, management or control of the Secured Property or the interest of the debtor in such Secured Property, or any part of such Secured Property or interest;
- (p) a distress, execution, warrant, garnishment, attachment, sequestration, levy, writ, or any similar process is issued or enforced upon or against all or any part of the Secured Property, or any third party demand is issued by the Crown, governmental authority, administrative body or any taxation authority in respect of the debtor or all or any part of the Secured Property, or any other seizure is made in respect of all or any part of the Secured Property;
- (q) the resignation or termination of the auditors of the Borrower unless a replacement that is satisfactory to the Lender in its sole discretion, acting reasonably, is found within 30 days;
- (r) any claim, action, litigation, arbitration or proceeding against the Borrower or any Subsidiary results in a judgment against or settlement by the Borrower or any Subsidiary which, if enforced or paid in accordance with its terms, could have a Material Adverse Effect on the business of the Borrower on a consolidated basis or on the Borrower or any of the Subsidiaries;
- (s) any material portion of the Secured Property is damaged or destroyed;
- (t) a Person institutes proceedings against the Borrower or any Subsidiary alleging infringement of any intellectual property rights and which, if successful, could have a material adverse effect on the Borrower and such proceedings are not dismissed within thirty (30) Business Days from the initiation thereof subject to extensions in time by the Lender in its sole discretion, acting reasonably;
- (u) an Event of Default as defined in the Debenture or any of the Security Documents occurs; or
- (v) any of the security evidenced by the Security Documents shall cease to be a valid and perfected security interest.

## 10.2 Notice of Event of Default

The Borrower will give notice in writing to the Lender of the occurrence of any Event of Default or other event which, with the lapse of time or giving of notice or otherwise, would be an Event of Default, forthwith upon becoming aware thereof.

Such written notice shall specify the nature of such default or Event of Default and the steps taken to remedy the same.

**10.3 Default Interest Rate**

Upon the occurrence and continuance of an Event of Default the interest rates applicable to the Obligations shall be 18% per annum as a genuine pre-estimate of the Lender's liquidated damages and not as a penalty, which shall accrue from the initial date of such Event of Default until that Event of Default is cured or waived.

**ARTICLE 11  
REMEDIES**

**11.1 Consequences of an Event of Default**

Upon the occurrence of an Event of Default, the Lender may provide written notice to the Borrower declaring the Obligations to be immediately due and payable by the Borrower to the Lender. Without the necessity of any further act or formality, but subject to applicable law, the security hereby created and created by the Security Documents shall become enforceable.

**11.2 Waiver of an Event of Default**

An Event of Default may only be waived in writing by the Lender.

**11.3 Limitation of Liability**

The Lender shall not be liable by reason of any entry into or taking possession of any of the Secured Property hereby charged or intended so to be or any part thereof, to account for anything except actual receipts or be liable for any loss on realization or any act or omission for which a secured party possession might be liable. The Lender shall not be liable or accountable for any failure to exercise its remedies, take possession of, seize, collect, realize, sell, lease or otherwise dispose of or obtain payment for the Secured Property and shall not be bound to institute proceedings for such purposes or for the purposes of preserving any rights, remedies or powers of the Lender, the Borrower or any other person in respect of same. The Borrower hereby releases and discharges the Lender from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Borrower or any person claiming through or under the Borrower by reason or as a result of anything done or omitted to be done, as the case may be by the Lender or any successor or assign claiming through or under the Lender under the provisions of this Agreement, unless such claim is the result of gross negligence or wilful misconduct.

**11.4 Judgment**

Subject to applicable Law, neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Borrower to perform the Obligations nor shall such operate as a merger of any covenant or affect the right of the Lender to receive interest at the specified rate, and any judgment shall bear interest at such rate.

**ARTICLE 12  
GENERAL**

**12.1 Releases**

The Lender may in its discretion from time to time release any part of the Secured Property or any other security either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Secured Property or any other security or any Person from the security created by this Agreement or the Security Documents or from any of the covenants herein contained. Each and every portion into which the Secured Property is or may hereafter be divided does and shall stay charged with the Obligations. No Person shall have the right to require the Obligations to be apportioned and the Lender shall not be accountable to the Borrower for any moneys except those actually received by the Lender.

**12.2 Expenses**

Provided the Borrower is in default, the Borrower shall pay to the Lender on demand all of the Lender's reasonable costs, charges and expenses in connection with the enforcement by any means of any provisions hereof or the exercise of any rights, powers or remedies hereunder, including, without limitation, all such costs, charges and expenses in connection with taking possession, maintaining, completing, preserving, protecting, collecting or realizing upon all or any part of the Secured Property.

**12.3 Discharge of Security Documents**

Unless the Debentures or any other obligations are then outstanding to the Lender, after the Obligations have been repaid in full, the Lender shall return the Secured Property to the Borrower, cancel and discharge the Security Documents with respect to any Obligations that are payable by the Borrower to the Lender and execute and deliver to the Borrower such instruments as shall be necessary to discharge this Agreement and the Security Documents.

**12.4 Communication**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during, or within three Business Days prior to, a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Business Day after the postmarked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day of the sending (provided it was sent before 4:30 p.m. Toronto time) and the applicable printed facsimile record shall be definitive evidence of the time and date of such facsimile transmission, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to

an employee of the addressee at such address with responsibility for matters to which the information relates. Notice of change of address, shall also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with the foregoing. Notices and other communications shall be addressed as follows:

(a) if to the Borrower:

Tercon Investments Ltd.  
#100 – 2079 Falcon Road  
Kamloops, BC V2C 432  
Attention: Chief Executive Officer  
Facsimile: (250) 372-1555

(b) if to the Lender:

0833824 B.C. Ltd.  
c/o Pala Investments AG  
Damstrasse 19  
6300 Zug, Switzerland

Attention: General Council  
Facsimile: +41 41 560 9071

with a copy (that does not constitute notice) to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: D'Arcy Nordick  
Facsimile: (416) 947-0866

## **12.5 Payments due on Business Day**

Whenever any payment hereunder shall be due on a day other than a Business Day, such payment will be made on the next succeeding Business Day and such extension of time will in such case be included in the computation of payment of interest thereunder.

## **12.6 Application of Proceeds**

Except as otherwise agreed to by the Lender in its sole discretion and as otherwise expressly provided hereunder, all payments made by or on behalf of the Borrower under this Agreement, after acceleration of the Aggregate Principal Amount, shall be applied by the Lender in the following order:

- (a) in payment of any amounts due and payable by way of recoverable expenses; in payment of any amounts by way of any fees;
- (b) in payment of any amounts due and payable as and by way of interest, including any interest on overdue amounts;
- (c) in payment of the Aggregate Principal Amount; and
- (d) in payment of all other indebtedness under the Credit Documents.

**12.7 Successors and Assigns**

This Agreement shall be binding on the Borrower and its successors and shall enure to the benefit of the Lender and its successors and permitted assigns.

**12.8 No Set-Off**

The Obligations shall be paid by the Borrower without regard to any set-off, counterclaim or equities between the Borrower and the Lender.

**12.9 Permitted Encumbrances**

Nothing in this Agreement, including references to Permitted Encumbrances herein, will be construed as conferring any rights upon any third party with respect to the priority, ranking or subordination of any security interests granted by the Borrower.

**12.10 Independent from Debentures**

Notwithstanding the fact that the Debenture is to be amended and restated concurrently with this Agreement and that there are cross default provisions between such documents as well as certain other commonalities, it is understood by the parties hereto, that this Agreement shall be considered independent from the term loan provided for pursuant to the Debenture and that in the event that the Debenture is repaid and this Agreement continues to remain in place, that any defined terms contained in the Debenture which are incorporated herein shall continue to apply as if the Debenture continued to remain outstanding, subject only to the fact that such terms and provisions shall be deemed to be amended to delete reference to the Debenture.

**12.11 No Novation**

The Borrower acknowledges and confirms that this Amended and Restated Operating Loan Agreement does not constitute a novation of the Original Agreement and that all debts, liabilities and obligations of the Borrower shall remain unaffected, except as amended hereby.

*[The remainder of the page has been left blank intentionally.]*