

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**APPLICATION RECORD
VOLUME 1 OF 3
(Returnable June 7, 2016)**

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Lawyers for Applicant, 2473304 Ontario Inc.

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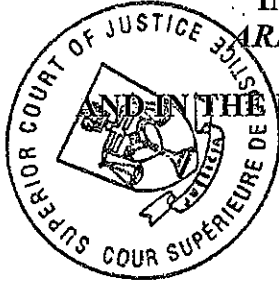
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**



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

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing on June 7, 2016, at 9:30 a.m. at the Court House at 330 University Avenue, Toronto, Ontario.

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

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

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 6, 2016

Issued by:

-2-

C. Irwin
Registrar

Local Registrar
330 University Ave
7th Floor
Toronto, Ontario
M5G 1R7

TO:	The Attached Service List
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SERVICE LIST
(as of June 6, 2016)

TO:	<p>CASSELS BROCK & BLACKWELL LLP Scotia Plaza 40 King Street West, Suite 2100 Toronto, ON M5H 3C2</p> <p>Jane Dietrich Tel: 416.860.5223 Fax: 416.640.3144 E-mail: jdietrich@casselsbrock.com</p> <p><i>Lawyers for Richter Advisory Group Inc., in its capacity as Proposed Monitor of the Applicant</i></p>
AND TO:	<p>NORTON ROSE FULBRIGHT CANADA LLP Royal Bank Plaza, South Tower 200 Bay Street, Suite 3800 P.O. Box 84 Toronto, ON M5J 2Z4</p> <p>Evan Cobb Tel: 416.216.1929 Fax: 416.216.3930 E-mail: evan.cobb@nortonrosefulbright.com</p> <p><i>Lawyers for the Canadian Imperial Bank of Commerce</i></p>
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AND TO:	OPTRUST RETAIL INC. c/o Bentall Kennedy (Canada) LP 65 Port Elgin Street, Unit 110 Mississauga, ON L5G 4V3 Jodi Sirai E-mail: manage-group@royalcourtyards.com
AND TO:	CALLOWAY REIT (WINNIPEG SW) INC. 700 Applewood Crescent, Suite 100 Vaughan, ON L4K 5X3 Gloria Parisi E-mail: GParisi@callowayreit.com
AND TO:	LUNDY'S LANE PORTFOLIO INC. 3625 Dufferin Street, Suite 500 Toronto, ON M3K 1N4 Gail Turner E-mail: gturner@primarisreit.com
AND TO:	CO-ENTREPRISE FIDUCIE LEQUIN & 108227 CANADA INC. 551 Chemin Knowlton Knowlton, QC J0E 1V0 Attn: Serge Richer Lorraine Cournoyer E-mail: lorraine@aluminiumknowlton.com

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AND TO:	LANDMARK SHOPPING CENTRE INC. c/o Emshih Developments Inc. 895 Brant Street, Unit 7 Burlington, ON L7R 2J6 Attn: Michael Shih Carla Parkinson E-mail: carla.emshih@gmail.com
AND TO:	DEV-LEE PROPERTIES LTD. 55 City Centre Drive, Suite 1000 Mississauga, ON L5B 1M3 Storme Viggers E-mail: sviggers@morguard.com
AND TO:	PICKERING BROCK CENTRE INC. c/o Bayfield Realty Advisors Inc. 2300 Yonge Street, Suite 904 Toronto, ON M4P 1E4 Deb Schneider E-mail: d.schneider@northumberlandmall.ca
AND TO:	OMNI 7771 ALDERBRIDGE DEVELOPMENT LIMITED PARTNERSHIP 300 – 550 Robson Street Vancouver, BC V6B 2B7 Steve Jantzen E-mail: sjantzen@omni.com

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AND TO:	RIOTRIN PROPERTIES (KIRKLAND) INC. c/o RioCan Real Estate Investment Trust The Exchange Tower 130 King Street West, Suite 700 Toronto, ON M5X 1E2 CC: RioCan Property Services 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4 Gina Laterza E-mail: glaterza@riocan.com
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. 70 York Street, Suite 710 Toronto, ON M5J 1S9 Attn: Servicing Vice-President Oriana Estrela E-mail: Oestrela@penequity.com
AND TO:	YONGE-KINGSTON CENTRE INC. c/o 2851 John Street, Suite One Markham, ON L3R 5R7 Attn: Vice President, Legal Department Julie Fernandes E-mail: jfernandes@centrecorp.com
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AND TO:	<p>2725321 CANADA INC. c/o Bentall Kennedy (Canada) LP 65 Port Street East, Unit 110 Mississauga, ON L5G 4V3</p> <p>CC: c/o Bentall Kennedy (Canada) LP Cloverdale Mall The Management Office 250 The East Mall Etobicoke, ON M9B 3Y8</p> <p>Rebecca Rachoff-Brown E-mail: rrachoff@Bentallkenedy.com</p>
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AND TO:	<p>151516 CANADA INC. c/o RioCan Real Estate Investment Trust The Exchange Tower 130 King Street West, Suite 700 Toronto, ON M5X 1E2</p> <p>CC: RioCan Property Services 700 Lawrence Avenue West, Suite 315 Toronto, ON, M6A 3B4</p> <p>Ana Hayley E-mail: ahayley@riocan.com</p>
AND TO:	<p>INNESS SHOPPING CENTRES LIMITED c/o Smart Center 700 Applewood Crescent, Suite 100 Vaghan, ON L4K 5X3</p> <p>Jeff Grove E-mail: JGrove@callowayreit.com</p>

AND TO:	WESTLO FINANCIAL CORP. 400 – 1245 West Broadway Vancouver, BC V6H 1G7 Linda McCabe E-mail: linda@valueindustries.com
AND TO:	2090950 ONTARIO LIMITED c/o Two+One Property Management Inc. 9-2700 14 th Avenue Markham, ON L3R 0J1
AND TO:	FIRST QUEENSBOROUGH SHOPPING CENTRES LIMITED 700 Applewood Crescent, Suite 100 Vaughan, ON L4K 5X3 Jeff Grove E-mail: JGrove@callowayreit.com
AND TO:	ORLANDO CORPORATION 6205 Airport Road, 5 th Floor Mississauga, ON L4V 1E3 Attn: President Diane Leering E-mail: leeringd@orlandocorp.com
AND TO:	WELLINGTON SOUTHDALE CENTRE INC. c/o 2851 John Street, Suite One Markham, ON L3R 5R7 Celina Dacosta E-mail: Celina.Dacosta@partnersreit.com
AND TO:	RIOTRIN PROPERTIES (RICHMOND HILL) INC. 2300 Yonge Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Enza Briguglio E-mail: ebriguglio@riocan.com

AND TO:	PLAZACORP PROPERTY HOLDINGS INC. AND 3088409 NOVA SCOTIA LIMITED 527 Queen Street, Suite 200 Fredericton, NB E3B 1B8 And: 1801 Hollis Street, Suite 2210 Halifax, NS B3J 3N4 Jennifer White E-mail: jwhite@creit.ca
AND TO:	HARVARD DEVELOPMENTS INC. c/o Harvard Property Management Inc. 1874 Scarth Street, Suite 2000 Regina, SK S4P 4B3 Katie Jessop E-mail: KJessop@harvard.ca
AND TO:	IMMEUBLES MARCHÉ TREMBLANT INC. 4120, rue Ste-Catherine West, 5 th Floor Westmount, QC H3Z 1P4 Attn: Dean Mendel, President
AND TO:	9139-6366 QUEBEC INC. 324 rue Aimé-Vincent Vaudreuil-Dorion, QC J7V 5V5 Attn: The Vice-President Leasing Lynn Harden E-mail: lynn@harden.ca
AND TO:	4240073 CANADA INC. 9224-1892 QUEBEC INC. 9171-9922 QUEBEC INC. c/o Carbonleo Real Estate Inc. 9160 boulevard Leduc Brossard, QC J4Y 0E3 Brigitte Laferriere E-mail: BLaferriere@quartierdix30.com

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AND TO:	XEROX CANADA LTD. 33 Bloor Street East, 3 rd Floor Toronto, ON M4W 3H1
AND TO:	CANADA REVENUE AGENCY c/o Department of Justice The Exchange Tower 130 King Street West Suite 3400, P.O. Box 36 Toronto, ON M5X 1K6 Attention: Diane Winters Phone: 416.973.3172 Fax: 416.973.0810 E-mail: diane.winters@justice.gc.ca <i>Counsel to Canada Revenue Agency</i>

APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- (a) an Order substantially in the form attached hereto as Schedule “A” (the “**Initial Order**”)¹, *inter alia*:
 - (i) abridging the time for service of the Notice of Application and the Application Record herein, if necessary, and validating service thereof;
 - (ii) declaring that 2473304 Ontario Inc. (the “**Company**”) is a company to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
 - (iii) granting a stay of proceedings in favour of the Company and its directors and officers;
 - (iv) approving the DIP Forbearance Agreement and granting the DIP Charge (each as defined below);
 - (v) establishing the Administration Charge (as defined below);
 - (vi) declaring that the directors and officers of the Company shall be indemnified against obligations and liabilities that they may incur in their capacity as directors or officers of the Company after the commencement of these proceedings, and granting the D&O Charge (as defined below) as security for such indemnity;

¹ A blackline of the Initial Order against the Commercial List User’s Committee Model Order is attached at Schedule “B”

- (vii) approving the GSO Forbearance Agreement (as defined below);
 - (viii) appointing Richter Advisory Group Inc. ("**Richter**" or the "**Proposed Monitor**") to act as the monitor (the "**Monitor**") of the Company in these CCAA proceedings;
 - (ix) sealing an unredacted copy of the Agency Agreement and the Comparison Chart (each as defined below); and
- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. **THE GROUNDS FOR THIS APPLICATION ARE:**

Background

- (a) the Company is a privately held women's clothing retailer that operates 37 stores in Canada under the licensed trade name "Jones New York";
- (b) in July, 2015 the Company acquired the assets of the Canadian retail business formerly operated under the name "Jones New York" from Sycamore Partners, a private equity firm based in New York. In connection with that transaction the Company entered into a term sheet with ABG-Jones, LLC, the licensor of the "Jones New York" brand, giving the Company the right to use the "Jones New York" brand in the sale of womenswear in Canada;
- (c) the Company is a wholly-owned subsidiary of Grafton-Fraser Inc. ("**Grafton**"), a privately held company that owns and operates retail stores in Canada selling menswear

under the Tip Top Tailors, George Richards Big and Tall, Mr. Big and Tall and Kingsport Big and Tall Clothier brands;

- (d) the Company is facing a liquidity crisis as a result of, among other things, lower than expected retail sales, delays in receipt of seasonal inventory, higher inventory costs due to unfavourable currency fluctuations and unexpected freight charges and excess prior season inventory remaining from the July 2015 acquisition of the business;

Secured Creditors

- (e) the Company is a party (as co-borrower with Grafton) to a credit agreement dated as of February 12, 2016 with Canadian Imperial Bank of Commerce ("**CIBC**"), as agent and as lender, pursuant to which CIBC has agreed to provide to the Company and Grafton revolving credit facilities (the "**CIBC Credit Facility**") in the maximum aggregate principal amount of \$35 million (the "**CIBC Credit Agreement**");
- (f) as of May 20, 2016, the Company has borrowed \$7,485,568 under the CIBC Credit Agreement and Grafton has borrowed \$23,014,138. Pursuant to the terms of the CIBC Credit Agreement, the Company is jointly and severally liable with Grafton for all indebtedness outstanding under the CIBC Credit Facility;
- (g) in connection with the negotiation and execution of the CIBC Credit Agreement, and related intercreditor issues, GSO Capital Partners, LP ("**GSO**"), an existing lender of Grafton, required that the Company execute a secured guarantee in its favour. The Company is liable to GSO pursuant to a guarantee agreement dated February 12, 2016 executed by the Company, as guarantor, in favour of GSO (the "**GSO Guarantee**");

- (h) pursuant to the terms of the GSO Guarantee, the Company unconditionally and irrevocably guarantees the prompt and complete payment of, among other things, all obligations of Grafton to GSO under an amended and restated credit agreement dated as of June 16, 2009 (as amended from time to time) (collectively, the “**GSO Credit Agreement**”). The outstanding indebtedness under the GSO Credit Agreement (including accrued interest) as of May 20, 2016 was approximately \$33,024,000;

Forbearance Agreements

- (i) the Company and Grafton entered into a forbearance agreement with CIBC dated as of June 6, 2016 (the “**DIP Forbearance Agreement**”) pursuant to which CIBC has agreed, in the context of the CCAA proceedings in respect of the Company, to (a) forbear from enforcing its rights under the CIBC Credit Agreement and the other loan documents under certain conditions, and (b) allow the Company to continue to borrow under the revolving facility in an amount not to exceed the lesser of \$8 million (subject to reduction to \$2 million on receipt of the net minimum guarantee payable under the Agency Agreement (as defined below)) and the Company’s borrowing base formula, and in excess of the Company’s borrowing base in certain circumstances;
- (j) the Company and Grafton also entered into a forbearance agreement with GSO, among others, dated as of June 6, 2016 (the “**GSO Forbearance Agreement**”) pursuant which GSO agreed to forbear from exercising its rights and remedies under the GSO Credit Agreement under certain conditions and to capitalize material interest payments until January 2017;

The SISP

- (k) on or about April 21, 2016 the Company, with the assistance of the retail consulting group at Richter Consulting Canada Inc. (the “**Consultant**”), initiated a process of soliciting offers for a sale of, or investment in the Company, its business and assets (the “**SISP**”);
- (l) following constructive discussions with a number of interested parties with respect to the sale or investment opportunity and significant activity in the data room, the Company ultimately received two proposals by the extended bid deadline. Both of those offers were binding liquidation proposals;
- (m) the Company, in consultation with the Consultant, reviewed the two proposals and determined that the proposal received from GA Retail Canada, ULC (the “**Agent**”) was the most beneficial to the Company and its stakeholders;
- (n) contemporaneous with this notice of application the Company will serve materials in support of a motion returnable June 13, 2016, seeking, *inter alia*, approval of the transactions contemplated under the agency agreement entered into between the Company and the Agent on June 6, 2016 (the “**Agency Agreement**”);

Relief Sought in the Initial Order

- (o) CIBC has declared the Company in default under the CIBC Credit Agreement and the Company does not have sufficient liquidity to repay the outstanding indebtedness to CIBC in full if CIBC should make a demand for repayment. As of May 20, 2016 there

was approximately \$30,499,706 million (including accrued interest) outstanding under the CIBC Credit Agreement;

- (p) the Company is also liable to GSO under the GSO Guarantee in the approximate amount of \$33,024,000 (including accrued interest) and the Company is unable to satisfy this obligation in full if required by GSO;
- (q) the Company is insolvent. It cannot meet its liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP Forbearance Agreement and the GSO Forbearance Agreement, the ability of the Company to conduct an orderly liquidation of its assets for the benefit of its stakeholders may be seriously impaired;
- (r) the Company requires a broad stay of proceedings to allow it to continue to operate and maintain the status quo while it undertakes an orderly liquidation of its assets with a view to maximizing benefits to the Company and its stakeholders;
- (s) the DIP Forbearance Agreement is intended to provide the Company with sufficient capital to (i) maintain its ongoing operations during the course of these CCAA proceedings, including payment of employees; (ii) fund the costs of these proceedings; and (iii) pursue an orderly liquidation of the Company's assets. It is a condition of the DIP Forbearance Agreement that in addition to its existing contractual security, CIBC be granted a priority court-ordered charge on all the assets, rights, undertakings and properties of the Company (the "**Property**") as security for amounts advanced to the Company under the DIP Forbearance Agreement (the "**DIP Charge**");
- (t) the Company is seeking a charge on the Property in the maximum amount of \$500,000 (the "**Administration Charge**") to secure the fees and disbursements of the Monitor,

counsel to the Monitor, independent counsel to the directors of the Company and counsel to the Company, in each case incurred in connection with services rendered to the Company both before and after the commencement of these CCAA proceedings;

- (u) similarly, the Applicant will require the participation of its directors and officers during these CCAA proceedings and proposes to indemnify its directors and officers and to secure such indemnity by way of a charge on the Property in the amount of \$500,000 (the “**D&O Charge**”);
- (v) the Applicant is also seeking the Court’s authorization to carry out its obligations under the GSO Forbearance Agreement which will provide the Company with stability during these CCAA proceedings and allow the Company to focus its efforts on the orderly liquidation of its assets;
- (w) the Company is seeking an order sealing an unredacted copy of the Agency Agreement and the chart comparing the two proposals that were received under the SISP (the “**Comparison Chart**”), as they both contain commercially sensitive information that, if disclosed, would reveal confidential information, including pricing information, to their competitors;
- (x) Richter has consented to act as Monitor of the Company, subject to court approval;
- (y) those further grounds as set out in the Affidavit of Mark Sun, sworn June 6, 2016, and the Exhibits thereto (the “**Sun Affidavit**”);
- (z) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

- (aa) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 14.05(2), 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (bb) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Sun Affidavit, and the Exhibits thereto;
- (b) the Pre-Filing Report, to be filed;
- (c) the consent of Richter to act as Monitor dated June 3, 2016; and
- (d) such other material as counsel may advise and this Honourable Court may permit.

June 6, 2016

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Lawyers for Applicant, 2473304 Ontario Inc.

Tab A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

TUESDAY, THE 6th

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DAY OF JUNE, 2016

JUSTICE HAINEY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.

(the "Applicant")

INITIAL ORDER

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

ON READING the affidavit of Mark Sun sworn June 6, 2016 and the Exhibits thereto (the "Sun Affidavit"), the report of Richter Advisory Group Inc. ("Richter") as the proposed monitor dated June 6, 2016 (the "Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for Richter, in its capacity as the proposed monitor (the "Monitor") of the Applicant in these CCAA proceedings, counsel for the directors of the Applicant, counsel for Canadian Imperial Bank of Commerce ("CIBC"), counsel for GSO Capital Partners, LP ("GSO") and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Irene Artuso sworn June 6, 2016, filed, and on reading the consent of Richter to act as the Monitor

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

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

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, in accordance with the ABL Forbearance Agreement (as hereinafter defined), as described in the Sun Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment,

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

6. THIS COURT ORDERS that, subject to the terms of the Forbearance Agreements (as hereinafter defined), including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the Forbearance Agreements) the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreements, including the terms therein that refer to the Approved CCAA Cash Flow, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include (subject to the provisions of the Forbearance Agreements), without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied (including royalties under license agreements relating to the sale of branded inventory) to the Applicant following the date of this Order.

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

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

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

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Forbearance Agreements, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$100,000 in the aggregate; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased

premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that, subject to paragraph 15(v) hereof, until and including July 7, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any

business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 38 and 39 hereof, prevent the Lenders (as hereinafter defined) from exercising any rights or remedies in accordance with their respective Forbearance Agreements.

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, intellectual property licenses, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names, trademarks and trade names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor

shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

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

APPOINTMENT OF MONITOR

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

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the Lenders and their respective counsel of financial and other information as agreed to between the Applicant and each Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the Lenders;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

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

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

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the Lenders with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

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

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by the Applicant as part of the costs of these proceedings, subject to any assessment by the Court. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant on a weekly basis or on such other basis agreed by the Applicant and the applicable payee and, in addition, the Applicant is hereby authorized, *nunc pro tunc*, to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, and counsel to the directors of the Applicant retainers in the amounts of \$175,000, \$55,000, \$120,000 and \$10,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, and counsel for the directors of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

FORBEARANCE AGREEMENTS AND DIP FINANCING

32. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the following forbearance agreements (together, the “**Forbearance Agreements**”) is hereby ratified and approved:

- (a) the Forbearance Agreement dated as of June 6, 2016 (the “**ABL Forbearance Agreement**”) among the Applicant and Grafton-Fraser Inc., as borrowers, and CIBC, as lender and as agent (in that capacity, the “**ABL Lender**”); and
- (b) the Forbearance Agreement dated as of June 6, 2016 (the “**Term Forbearance Agreement**”) among Grafton-Fraser Inc., as borrower, the Applicant, as guarantor, the lenders that are parties to the Existing Credit Agreement (as defined in the Term Forbearance Agreement), as lenders (collectively, the “**GSO Lenders**”), and GSO, as administrative agent for itself and the GSO Lenders (the GSO Lenders and GSO being collectively referred to as the “**Term Lenders**”, and together with the ABL Lender, the “**Lenders**”);

and the Applicant is hereby directed to comply with and perform the provisions of (i) the ABL Forbearance Agreement and the credit agreement dated as of February 12, 2016 by and among Grafton-Fraser Inc. and the Applicant, as borrowers, and the ABL Lender, as amended by the ABL Forbearance Agreement (the “**ABL Credit Agreement**”), and (ii) the Term Forbearance Agreement and the guarantee agreement dated as of February 12, 2016 and entered into by the Applicant in favour of GSO as administrative agent for itself and the GSO Lenders and the Term Lenders (the “**Term Guarantee**”).

33. THIS COURT ORDERS that the Applicant’s compliance with and performance of the Blocked Account Agreements (as defined in the ABL Credit Agreement) from and after the date of this Initial Order, as required pursuant to Section 4.1.12 of the ABL Forbearance Agreement, is hereby authorized and approved and the Applicant is hereby directed to comply with the provisions of the Blocked Account Agreements in accordance with the terms of the ABL Forbearance Agreement.

34. THIS COURT ORDERS that the Applicant shall be entitled, subject to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, to continue to obtain and borrow,

repay and re-borrow additional monies under the credit facility (the “**ABL Facility**”) from the ABL Lender pursuant to the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant’s working capital requirements, provided that borrowings by the Applicant under the ABL Facility shall not exceed the amounts contemplated in the ABL Forbearance Agreement. For greater certainty, the ABL Lender shall be entitled to apply receipts and deposits made to the Applicant’s bank accounts, whether directly or pursuant to the Blocked Account Agreements, against the indebtedness of the Applicant to the ABL Lender in accordance with the ABL Credit Agreement, the ABL Forbearance Agreement and the Blocked Account Agreements, whether such indebtedness arose before or after the date of this Initial Order.

35. THIS COURT ORDERS that subject to the provisions of the Forbearance Agreements, the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Lenders under and pursuant to the ABL Credit Agreement, the Term Guarantee and the Forbearance Agreements as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. THIS COURT ORDERS that in addition to the existing liens, charges, mortgages and encumbrances in favour of the ABL Lender, as security for all of the obligations of the Applicant to the ABL Lender relating to advances made to the Applicant under the ABL Facility from and after the date of this Initial Order, the ABL Lender shall be entitled to the benefit of and is hereby granted a charge (the “**ABL Lender’s DIP Charge**”) on the Property (excluding the Term Priority Collateral as defined in the Intercreditor Agreement (as hereinafter defined)). The ABL Lender’s DIP Charge shall have the priority set out in paragraphs 43 and 45 hereof.

37. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the ABL Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ABL Lender’s DIP Charge.

38. THIS COURT ORDERS that, upon the earlier of the occurrence of a Terminating Event or the Termination Date (in each case as defined in the ABL Forbearance Agreement), the ABL Lender may:

- (a) cease making advances to the Applicant, provided that the ABL Lender will continue to fund the payment by the Applicant of employee wages and Priority Payables (as defined in the ABL Forbearance Agreement) for a period of not less than five (5) business days following the last day of the Forbearance Period (as defined in the ABL Forbearance Agreement), and
- (b) (i) set off and/or consolidate any amounts owing by the ABL Lender to the Applicant against the obligations of the Applicant to the ABL Lender under the ABL Credit Agreement, the Blocked Account Agreements, the ABL Forbearance Agreement or any other Loan Document (as defined in the ABL Credit Agreement) and make demand, accelerate payment and give other notices, provided the ABL Lender shall not set off or consolidate against amounts held back from distribution to the ABL Lender in respect of the Administration Charge, and (ii) upon not less than five (5) business days' notice to the Applicant, the Monitor and the Term Lenders, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the other Loan Documents, the ABL Lender's DIP Charge, or the *Personal Property Security Act* (Ontario) or similar legislation in any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the ABL Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS that, upon the occurrence of a Terminating Event (as defined in the Term Forbearance Agreement), the Term Lenders may:

- (a) set off and/or consolidate any amounts owing by the Term Lenders to the Applicant against the obligations of the Applicant to the Term Lenders under the Term Guarantee, the Term Forbearance Agreement or any security agreements, mortgages, deeds of trust, hypothecs or other collateral documents executed and delivered by the

Applicant in favour of the Term Lender (the “**Term Security Documents**”), and make demand, accelerate payment and give other notices; and

- (b) upon not less than five (5) business days’ notice to the Applicant, the Monitor and the ABL Lender, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Term Forbearance Agreement, the Term Guarantee or the Term Security Documents, or the *Personal Property Security Act* (Ontario) or similar legislation of any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

40. THIS COURT ORDERS that nothing in this Order shall amend, override or relieve the ABL Lender or the Term Lenders of any of the provisions of the intercreditor agreement among them dated as of February 12, 2016 (the “**Intercreditor Agreement**”).

41. THIS COURT ORDERS AND DECLARES that each of the ABL Lender and the Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada), with respect to (i) any obligations outstanding as of the date of this Order or arising hereafter under the ABL Credit Agreement or the ABL Forbearance Agreement, and (ii) any obligations outstanding as of the date of this Order or arising hereafter under the Term Guarantee or the Term Forbearance Agreement.

42. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the Term Forbearance Agreement, and the granting of the ABL Lender’s DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the ABL Lender's DIP Charge over the Property so charged by them, as among them, shall be as follows:

First – Administration Charge;

Second – ABL Lender's DIP Charge; and

Third – Directors' Charge.

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

45. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property so charged by them and, subject to the provisions of the Intercreditor Agreement, such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than (subject to further Order of the Court) validly perfected and enforceable security interests, if any, in favour of Xerox Canada Ltd. (File No. 710539839 under the *Personal Property Security Registry* (Ontario)).


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

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

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

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

SEALING ORDER

49. THIS COURT ORDERS that Exhibit "D" to the Sun Affidavit and Appendix  of the Pre-Filing Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition; English) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available

in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

51. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/> shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

52. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant, the Monitor, the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

57. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the ABL Credit Agreement or the ABL Forbearance Agreement up to and including the date this order may be varied or amended.

58. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Tab B

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE — MR.) WEEKDAY TUESDAY, THE #
JUSTICE — HAINES) 6th
DAY OF MONTH JUNE, 20th YR 2016

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
[APPLICANT'S NAME] 2473304 ONTARIO INC.

(the "Applicant")

INITIAL ORDER

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

ON READING the affidavit of [NAME] Mark Sun sworn [DATE] June 6, 2016 and the Exhibits thereto (the "Sun Affidavit"), the report of Richter Advisory Group Inc. ("Richter") as the proposed monitor dated June <@>, 2016 (the "Pre-Filing Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], ~~no one appearing for [NAME]~~[†] the Applicant, counsel for Richter, in its capacity as the proposed monitor (the "Monitor") of the Applicant in these CCAA proceedings, counsel for the directors of the Applicant, counsel for

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

Canadian Imperial Bank of Commerce ("CIBC"), counsel for GSO Capital Partners, LP ("GSO") and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of [NAME]Irene Artuso sworn [DATE]June 6, 2016, filed, and on reading the consent of [MONITOR'S NAME]Richter to act as the Monitor;

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

6. THIS COURT ORDERS that, subject to the terms of the Forbearance Agreements (as hereinafter defined), including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the Forbearance Agreements) the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee ~~and pension~~ benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements including any and all cheques for such employee obligations which have been issued, but not cleared prior to the date of this Order; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein and subject to the terms of the Forbearance Agreements, including the terms therein that refer to the Approved CCAA Cash Flow, the Applicant shall be entitled but not required to pay all

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

reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, (subject to the provisions of the Forbearance Agreements), without limitation:

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

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

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

which are attributable to or in respect of the carrying on of the Business by the Applicant.

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

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

RESTRUCTURING

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding \$~~50,000~~ in any one transaction or \$~~100,000~~ in the aggregate⁵; and

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

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

- (b) ~~{terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate};--and~~
- (c) ~~pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,~~

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

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

13. THIS COURT ORDERS that if a notice of disclaimer ~~{or resiliation}~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~{or resiliation}~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~{or resiliation}~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that, subject to paragraph 15(v) hereof, until and including ~~[DATE MAX. 30 DAYS]~~, July 7, 2016, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, ~~or~~ (iv) prevent the registration of a claim for lien, or (v) subject to paragraphs 38 and 39 hereof, prevent the Lenders (as hereinafter defined) from exercising any rights or remedies in accordance with their respective Forbearance Agreements.

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, intellectual property licenses, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, trademarks and trade names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

liable in their capacity as directors or officers of the Applicant for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,⁷ except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~●~~500,000 as security for the indemnity provided in paragraph {20} of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~{43} and ~~{40}~~{45} herein.

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

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that ~~{MONITOR'S NAME}~~Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall

⁷ The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

⁸ Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

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

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

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

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

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the ~~DIP Lender~~ Lenders with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the

Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

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

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, and counsel to the directors of the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or after the date of this Order, by the Applicant as part of the costs of these proceedings, subject to any assessment by the Court. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel ~~for~~ to the Monitor, counsel to the Applicant, and counsel ~~for~~ to the directors of the Applicant on a ~~[TIME INTERVAL]~~ weekly basis or on such other basis agreed by the Applicant and the applicable payee and, in addition, the Applicant is hereby authorized, nunc pro tunc, to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, and counsel to the directors of the Applicant retainers in the amount[s] of \$~~●~~ [-amounts of \$175,000, \$55,000, \$120,000 and \$10,000, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, ~~if any, and the Applicant's counsel~~, and counsel for the directors of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~●~~ 500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~[38]~~43 and ~~[40]~~45 hereof.

FORBEARANCE AGREEMENTS AND DIP FINANCING

32. THIS COURT ORDERS that the execution, delivery, entry into, compliance with, and performance by the Applicant of the following forbearance agreements (together, the “Forbearance Agreements”) is hereby ratified and approved:

- (a) the Forbearance Agreement dated as of June 6, 2016 (the “ABL Forbearance Agreement”) among the Applicant and Grafton-Fraser Inc., as borrowers, and CIBC, as lender and as agent (in that capacity, the “ABL Lender”); and
- (b) the Forbearance Agreement dated as of June 6, 2016 (the “Term Forbearance Agreement”) among Grafton-Fraser Inc., as borrower, the Applicant, as guarantor, the lenders that are parties to the Existing Credit Agreement (as defined in the Term Forbearance Agreement), as lenders (collectively, the “GSO Lenders”), and GSO, as administrative agent for itself and the GSO Lenders (the GSO Lenders and GSO being collectively referred to as the “Term Lenders”, and together with the ABL Lender, the “Lenders”);

and the Applicant is hereby directed to comply with and perform the provisions of (i) the ABL Forbearance Agreement and the credit agreement dated as of February 12, 2016 by and among Grafton-Fraser Inc. and the Applicant, as borrowers, and the ABL Lender, as amended by the ABL Forbearance Agreement (the “ABL Credit Agreement”), and (ii) the Term Forbearance Agreement and the guarantee agreement dated as of February 12, 2016 and entered into by the Applicant in favour of GSO as administrative agent for itself and the GSO Lenders and the Term Lenders (the “Term Guarantee”).

33. THIS COURT ORDERS that the Applicant’s compliance with and performance of the Blocked Account Agreements (as defined in the ABL Credit Agreement) from and after the date of this Initial Order, as required pursuant to Section 4.1.12 of the ABL Forbearance Agreement, is hereby authorized and approved and the Applicant is hereby directed to comply with the provisions of the Blocked Account Agreements in accordance with the terms of the ABL Forbearance Agreement.

34. ~~32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered~~THIS COURT ORDERS that the Applicant shall be entitled, subject to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, to continue to obtain and borrow, repay and re-borrow additional monies under a~~the~~ credit facility from ~~[DIP LENDER'S NAME]~~ (the "DIP Lender")(the "ABL Facility") from the ABL Lender pursuant to the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings by the Applicant under such credit facility shall not exceed \$● unless permitted by further Order of this Court.~~the ABL Facility shall not exceed the amounts contemplated in the ABL Forbearance Agreement. For greater certainty, the ABL Lender shall be entitled to apply receipts and deposits made to the Applicant's bank accounts, whether directly or pursuant to the Blocked Account Agreements, against the indebtedness of the Applicant to the ABL Lender in accordance with the ABL Credit Agreement, the ABL Forbearance Agreement and the Blocked Account Agreements, whether such indebtedness arose before or after the date of this Initial Order.~~

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

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

36. ~~35. THIS COURT ORDERS that the DIP~~In addition to the existing liens, charges, mortgages and encumbrances in favour of the ABL Lender, as security for all of the obligations

of the Applicant to the ABL Lender relating to advances made to the Applicant under the ABL Facility from and after the date of this Initial Order, the ABL Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP" ~~ABL Lender's DIP Charge~~) on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made.") on the Property (excluding the Term Priority Collateral as defined in the Intercreditor Agreement (as hereinafter defined)). The ~~DIP~~ABL Lender's ~~DIP~~ Charge shall have the priority set out in paragraphs ~~{38}~~43 and ~~{40}~~45 hereof.

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

37. ~~(a) the DIP~~THIS COURT ORDERS that, notwithstanding any other provision of this Order, the ABL Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ~~DIP~~ABL Lender's ~~DIP~~ Charge or any of the Definitive Documents;

38. THIS COURT ORDERS that, upon the earlier of the occurrence of a Terminating Event or the Termination Date (in each case as defined in the ABL Forbearance Agreement), the ABL Lender may:

- (a) cease making advances to the Applicant, provided that the ABL Lender will continue to fund the payment by the Applicant of employee wages and Priority Payables (as defined in the ABL Forbearance Agreement) for a period of not less than five (5) business days following the last day of the Forbearance Period (as defined in the ABL Forbearance Agreement), and
- ~~(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ~~●~~ days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and (i) set off and/or consolidate any amounts owing by the ~~DIP~~ABL Lender to the Applicant against the obligations of the Applicant to the ~~DIP~~ Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to~~ABL Lender under the ABL Credit Agreement, the Blocked Account Agreements.

the ABL Forbearance Agreement or any other Loan Document (as defined in the ABL Credit Agreement) and make demand, accelerate payment and give other notices, or provided the ABL Lender shall not set off or consolidate against amounts held back from distribution to the ABL Lender in respect of the Administration Charge, and (ii) upon not less than five (5) business days' notice to the Applicant, the Monitor and the Term Lenders, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the other Loan Documents, the ABL Lender's DIP Charge, or the *Personal Property Security Act* (Ontario) or similar legislation in any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and— and the foregoing rights and remedies of the ABL Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

39. THIS COURT ORDERS that, upon the occurrence of a Terminating Event (as defined in the Term Forbearance Agreement), the Term Lenders may:

- (a) set off and/or consolidate any amounts owing by the Term Lenders to the Applicant against the obligations of the Applicant to the Term Lenders under the Term Guarantee, the Term Forbearance Agreement or any security agreements, mortgages, deeds of trust, hypothecs or other collateral documents executed and delivered by the Applicant in favour of the Term Lender (the "Term Security Documents"), and make demand, accelerate payment and give other notices; and
- (b) (e) upon not less than five (5) business days' notice to the Applicant, the Monitor and the ABL Lender, exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Term Forbearance Agreement, the Term Guarantee or the Term Security Documents, or the *Personal Property Security Act* (Ontario) or similar legislation of any other applicable jurisdiction, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for

the appointment of a trustee in bankruptcy of the Applicant and the foregoing rights and remedies of the DIP Lender Term Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

40. THIS COURT ORDERS that nothing in this Order shall amend, override or relieve the ABL Lender or the Term Lenders of any of the provisions of the intercreditor agreement among them dated as of February 12, 2016 (the "Intercreditor Agreement").

41. 37- THIS COURT ORDERS AND DECLARES that each of the DIP ABL Lender and the Term Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the Bankruptcy and Insolvency Act of (Canada (the "BIA"), with respect to any advances made under the Definitive Documents), with respect to (i) any obligations outstanding as of the date of this Order or arising hereafter under the ABL Credit Agreement or the ABL Forbearance Agreement, and (ii) any obligations outstanding as of the date of this Order or arising hereafter under the Term Guarantee or the Term Forbearance Agreement.

42. THIS COURT ORDERS AND DECLARES that the payments made by the Applicant pursuant to this Order, the ABL Credit Agreement, the ABL Forbearance Agreement, the Blocked Account Agreements or the Term Forbearance Agreement, and the granting of the ABL Lender's DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. 38- THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP ABL Lender's DIP Charge over the Property so charged by them, as among them, shall be as follows⁹:

⁹ The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

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

Second – ~~DIP~~ABL Lender's DIP Charge; and

Third – Directors' Charge ~~(to the maximum amount of \$●).~~

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

45. ~~40.~~ THIS COURT ORDERS that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~Charges (all as constituted and defined herein) shall constitute a charge on the Property ~~and so charged by them and, subject to the provisions of the Intercreditor Agreement,~~ such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, ~~other than (subject to further Order of the Court) validly perfected and enforceable security interests, if any, in favour of Xerox Canada Ltd. (File No. 710539839 under the Personal Property Security Registry (Ontario)).~~

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

47. ~~42.~~ THIS COURT ORDERS that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~Charges and the Forbearance Agreements shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees")

and/or the ~~DIPABL~~ Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

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

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

SEALING ORDER

49. THIS COURT ORDERS that Exhibit "D" to the Sun Affidavit and Appendix <@> of the Pre-Filing Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

SERVICE AND NOTICE

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

51. 45.-THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/~~ shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>'.
~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/~~

52. 46.-THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant, the Monitor, the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

57. ~~51.~~ THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the ABL Credit Agreement or the ABL Forbearance Agreement up to and including the date this order may be varied or amended.

58. ~~52.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

Document comparison by Workshare Compare on June-06-16 11:15:16 AM

Input:	
Document 1 ID	interwovenSite://WS_EAST/CANADA_EAST/93276268/1
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Description	#93276268v12<CANADA_EAST> - Initial Order (Jones NY)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
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Style change	
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Moved deletion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	156
Deletions	177
Moved from	7
Moved to	7
Style change	0
Format changed	0
Total changes	347

Court File No. CV-16-11419-0001

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.

(the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

NOTICE OF APPLICATION

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Lawyers for Applicant, 2473304 Ontario Inc.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
2473304 ONTARIO INC.**

(the "Applicant")

**AFFIDAVIT OF MARK SUN
(INITIAL ORDER)
(SWORN JUNE 6, 2016)**

I, Mark Sun, Executive, of the City of Brampton, in the Province of Ontario, Canada, **MAKE OATH AND SAY:**

1. I am the Vice-President and Chief Financial Officer of the Applicant 2473304 Ontario Inc., which carries on business under the licensed trade name "Jones New York" in Canada (the "**Company**"), and as such I have knowledge of the matters set out herein. I have also reviewed the books and records of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where information has been received from other sources, I have stated the source of the information and believe it to be true.
2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

I. INTRODUCTION

3. I swear this affidavit in support of an application by the Company for an initial order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), among other things:

- (a) granting a stay of proceedings in favour of the Company and its directors and officers;
- (b) approving the DIP Forbearance Agreement and granting the DIP Charge (each as defined below);
- (c) approving the GSO Forbearance Agreement (as defined below); and
- (d) appointing Richter Advisory Group Inc. (“**Richter**” or the “**Proposed Monitor**”) to act as the monitor (the “**Monitor**”) of the Company in these CCAA proceedings.

4. I also swear this affidavit in support a motion by the Company, which the Company proposes to be heard on Monday, June 13, 2016 (subject to the Initial Order being granted by the Court) for an Order, among other things, approving the transactions contemplated under the agency agreement entered into between the Company and GA Retail Canada, ULC (the “**Agent**”) on June 6, 2016 (the “**Agency Agreement**”) and granting the Agent's Charge (as defined below) (the “**Agency Agreement Approval Order**”).

5. The Company is a privately held women’s clothing retailer that operates 37 stores in Canada. In July, 2015 the Company acquired the tangible assets of the Canadian retail business formerly operated under the name “Jones New York” from Sycamore Partners

(“**Sycamore**”), a private equity firm based in New York (the “**Acquisition**”). In connection with the Acquisition the Company entered into a term sheet with ABG-Jones, LLC (“**ABG**”), the licensor of the “Jones New York” brand, giving the Company the right to use the “Jones New York” brand in the sale of womenswear in Canada.

6. The Company is a wholly-owned subsidiary of Grafton-Fraser Inc. (“**Grafton**”), a privately held company that owns and operates retail stores in Canada selling menswear under the Tip Top Tailors, George Richards Big and Tall, Mr. Big and Tall and Kingsport Big and Tall Clothier brands.

7. The Company is facing a liquidity crisis as a result of, among other things, lower than expected retail sales, delays in receipt of seasonal inventory, higher inventory costs due to unfavourable currency fluctuations and unexpected freight charges, and excess prior season inventory remaining from the July 2015 acquisition of the business.

8. The Company is in default of certain covenants with its operating lender, Canadian Imperial Bank of Commerce (“**CIBC**”). The Company is also a guarantor of Grafton’s term loan obligation to GSO Capital Partners, LP (“**GSO**”) under the GSO Credit Agreement (as defined below) and certain events have occurred that have triggered one or more events of default under the GSO Credit Agreement permitting GSO to demand on the GSO Guarantee (as defined below).

9. The Company has entered into forbearance agreements with CIBC and with GSO, respectively, each of which contemplate, among other things, an orderly liquidation of the Company’s inventory and furniture, fixtures and equipment in the context of CCAA proceedings

10. The DIP Forbearance Agreement that the Company has entered into with CIBC further contemplates that CIBC will continue to make its revolving asset-based loan facilities available to the Company during these CCAA proceedings, subject to a number of terms and conditions, including that CIBC be granted a priority Court-ordered charge on the Company's property as security for advances it makes during these proceedings.

11. In the GSO Forbearance Agreement, among other terms, GSO has agreed to capitalize interest payments in accordance with the terms thereunder.

12. On or about April 21, 2016 the Company, with the assistance of the retail consulting group at Richter Consulting Canada Inc. (the "**Consultant**"), initiated a process of soliciting offers for a sale of, or investment in the Company, its business and assets (the "**SISP**"). The SISP provided, among other things, that the deadline for submission of binding offers was 2:00 pm Toronto time on May 19, 2016 (subsequently extended to 5:00 pm Toronto time on May 21, 2016).

13. The Company received two liquidation proposals under the SISP and selected the proposal from the Agent as the most beneficial to the Company and its stakeholders. The Company is seeking approval of the transactions contemplated in the Agency Agreement to be implemented through these CCAA proceedings.

14. The Company is not able to successfully restructure its affairs outside of formal insolvency proceedings. The Company is insolvent and unable to meet its liabilities as they become due. The Company requires the protection and other provisions of an initial order under the CCAA to provide it with a stable environment to preserve its value for its stakeholders while

the Company pursues an orderly liquidation of its assets through the transactions contemplated in the Agency Agreement.

II. BACKGROUND

A) Corporate History and Structure

15. The Company is a corporation incorporated under the *Business Corporations Act* (Ontario) on July 2, 2015 with its head office located at 388 Applewood Crescent, Vaughan, Ontario. The Company is a wholly-owned subsidiary of Grafton.

16. In July 2015 the Company acquired the tangible assets formerly owned and used by Sycamore in the operation of the “Jones New York” womenswear business in Canada, with the exception of the “Jones New York” brand and related intellectual property rights (the “**JNY Intellectual Property**”). In or around the time of the sale to the Company, the JNY Intellectual Property was conveyed by Sycamore to ABG. As discussed in more detail below, in connection with its acquisition of the womenswear retailing assets from Sycamore, the Company entered into a term sheet with ABG (the “**ABG Term Sheet**”) pursuant to which ABG licenses to the Company the JNY Intellectual Property for use in the retail sale of womenswear.

B) Business & Premises

17. The Company operates 37 retail stores across Canada that sell women’s clothing and accessories, with a focus on women’s business attire. The Company has store locations in Ontario (23), Quebec (7), British Columbia (3), Manitoba (1), Alberta (1), Saskatchewan (1) and Nova Scotia (1). All store locations are operated out of leased premises.

18. The Company also operates out of a 125,000 square foot distribution centre in Ontario where it receives, stores and ships inventory to its various store locations, and in which one of the Company's retail stores are operated (the "**Distribution Centre**"). The Distribution Centre is located at 388 Applewood Crescent, Vaughan, Ontario.

C) Intercompany Arrangements

19. As part of the shared services arrangement between the Company and Grafton, the Company warehouses and distributes an amount of inventory for Grafton relating to its e-commerce operations. All Grafton inventory is identifiable in that it consists solely of menswear, and Grafton is in the process of transferring its inventory to another warehouse.

20. Grafton makes certain of its management and support service employees available to the Company. Grafton has historically charged the Company on an intercompany basis for its proportionate share of the time spent by such management and support service staff on the Company's business. From July 2015 until April 2016 the Company has paid Grafton approximately \$1.6 million in respect of these services. Grafton has confirmed that it will continue to provide these services to the Company and the Cash-Flow Statement (as defined below) includes an expenditure by the Company in respect of these services.

21. In or about December 2015 and January 2016, while Grafton and the Company were negotiating the terms of the CIBC Credit Agreement (as defined below), the Company required financial assistance to pay for necessary inventory. Grafton provided that assistance on an interim basis, until closing of the CIBC Credit Agreement, by advancing approximately \$4.1 million to the Company. The amount of those advances was repaid by the Company to Grafton in March 2016, following closing of the CIBC Credit Agreement.

D) Employees

22. As of May 20, 2016, the Company had approximately 300 employees, of which approximately 70 were full time employees and 230 were part time employees. The Company's employees are not represented by a union and are not subject to a collective bargaining agreement.

E) License & Supply Relationships

Term Sheet with ABG-Jones, LLC

23. The Company acquired the right to market and sell womenswear bearing the "Jones New York" brand in Canada pursuant to the ABG Term Sheet, with an effective date of August 1, 2015.

24. The term of the ABG Term Sheet is broken down into "contract years", with the first "contract year" commencing on August 1, 2015 and ending on January 31, 2017 ("**Contract Year 1**"). Each subsequent contract year runs from February 1 through January 31. The ABG Term Sheet term expires on January 31, 2026, being the end of "contract year 10".

25. The ABG Term Sheet contains a schedule of ABG licensees who are authorized to make "Jones New York" branded products (mostly for specialty items such as swimwear, rainwear, neckwear, etc., referred to in the agreement as "licensed products"). The ABG Term Sheet also identifies GBG USA Inc. ("**GBG**") as ABG's "sourcing agent" who is authorized to make certain other "Jones New York" branded product (items such as active wear, denim, dresses, footwear, tailored clothing, etc., referred to in the agreement as "sourced products"). The ABG Term Sheet requires that the Company use commercially reasonable efforts to purchase its inventory from the licensees (for licensed products) and from GBG (for sourced products).

26. Pursuant to the ABG Term Sheet, the Company agreed to pay royalties to ABG based upon (i) gross revenue from its retail locations (less certain permitted deductions); (ii) gross invoiced cost of certain “other products” not branded with the “Jones New York” trademark and made by the Company (as opposed to the licensees or GBG); and (iii) gross revenue earned from products sold through online purchases (less certain permitted deductions) (collectively, the “**Royalties**”).

27. The Company agreed to pay a guaranteed minimum royalty in each contract year, which is a non-returnable advance recoupable against the Royalties due in the same contract year.

28. In addition to the guaranteed minimum royalty, the Company agreed to purchase minimum amounts of “sourced product” from GBG in each contract year. Notwithstanding the provisions of the ABG Term Sheet, GBG has been unable to supply “sourced products” to the Company to date. As a result, the Company was required to source “Jones New York” and other branded merchandise from other suppliers for the Fall 2015 and Spring 2016 seasons, which it did with permission of ABG. Due to the timing of the acquisition of the Canadian retail business from Sycamore and the long lead times required for sourcing product, merchandise had to be purchased from alternative vendors at higher costs than initially contemplated. Because the Company was delayed in placing its orders for merchandise, it also incurred significant incremental freight costs to ship merchandise by air to ensure it arrived in time to properly stock its stores.

29. The Company’s obligations under the ABG Term Sheet in Contract Year 1 are guaranteed by Grafton pursuant to a guarantee agreement between Grafton and ABG.

30. The ABG Term Sheet contemplates the execution by the parties of a more formal agreement with respect to the matters set out in the ABG Term Sheet. The Company and ABG have been engaged in negotiations with respect to that agreement but the terms of that agreement have not been finalized.

31. The Company anticipates that ABG may view its pricing and other details to be confidential or proprietary. A copy of the ABG Term Sheet has therefore not been attached to this Affidavit. A copy will be available for review by the presiding Judge at the hearing of this Application, and filed if so directed.

32. Jones New York branded merchandise represents approximately 55% of the Company's inventory. The balance is labeled with other brands and has been purchased outright for resale, without royalty or licensing agreement.

F) Assets

33. The Company's assets, as reflected in its internal unaudited financial statements for the quarter ended April 30, 2016, had a net book value of approximately \$15.749 million, as follows (all amounts in \$000's):

ASSETS	As at Apr 30/16
Cash and cash equivalents	\$251
Accounts receivable	\$5
Inventories	\$13,233
Deposits and prepaid expenses	\$491
Total Current Assets	\$13,980
Property, plant and equipment	\$564
Intangible assets	\$1,205
Total Non-current Assets	\$1,769
TOTAL ASSETS	\$15,749

G) Liabilities

34. As of April 30, 2016, the said financial statements reflected liabilities totalling \$71.987 million, as follows (all amounts in \$000's):

LIABILITIES	As at Apr 30/16
Accounts payable and accrued liabilities	\$8,202
CIBC Revolver	\$30,500
Total Current Liabilities	\$38,702
GSO Guarantee	\$33,024
Deferred Lease Credits and Intercompany Liabilities	\$261
Total Non-current Liabilities	\$33,285
TOTAL LIABILITIES	\$71,987

Principal Secured Indebtedness of the Company

35. As discussed in detail below under the heading "Secured Creditors", as of May 20, 2016 the Company was indebted, on a secured basis, to CIBC in the amount of \$30,499,706 and was a guarantor of Grafton's term loan obligation to GSO in the approximate amount of \$33,024,000, in each case including accrued interest to May 20, 2016.

Employee Liabilities of the Company

36. As at May 20, 2016 the Company owed its current and former employees the following approximate aggregate amounts for unpaid wages and vacation pay:

- (a) ordinary course wage arrears: \$194,000 (accrued since the last pay period that ended on May 7, 2016); and
- (b) accrued and unused vacation pay: \$121,000.

37. It is contemplated (and reflected in the Cash Flow Statement discussed below) that the current wage arrears and accrued and unused vacation pay amounts for existing employees of the Company will be paid or applied in the ordinary course during the post-filing period.

38. The Company does not maintain a pension plan for its employees. The Company is current on deductions from employee wages at source.

39. The Company is current on its HST remittances. As HST is remitted in arrears, it is intended that certain HST amounts collected before the date of this Application will be remitted in the ordinary course post-filing. These HST remittances are reflected in the projected Cash Flow Statement discussed below.

Trade Suppliers

40. The Company has five main merchandise suppliers, all but one of which are overseas. In the case of its overseas suppliers, under the terms of the Company's Vendor Terms and Conditions, title to goods passes to the Company when they are loaded onto ships in the overseas port. Title to goods supplied domestically passes at the loading dock of the Company's Distribution Centre in Ontario. Payment terms afforded to the Company by its suppliers are generally net 45 or 60 days. The Company is not required to post letters of credit or any other form of security in respect of its current suppliers.

41. As of May 20, 2016, the Company was indebted to its suppliers for goods received in the aggregate amount of approximately \$5.2 million.

42. While I was not involved in the discussions, I understand that in or about the first week of April 2016 the Company's former Chief Executive Officer and its former Senior Vice-President of Merchandising, Marketing & Planning notified the Company's suppliers that it was exploring alternatives with respect to its business and asked that no more goods be manufactured or shipped until further notice. There are presently no goods in transit to the Company. The Company received its last shipment of goods during the week of May 30, 2016.

Landlords

43. As discussed above, the Company operates 37 retail stores across Canada and one Distribution Centre in Ontario. All of those premises are leased from third party landlords. The Company remits rent monthly, in advance, in the aggregate approximate amount of \$550,000 (inclusive of sales taxes). The Company remitted rents in respect of the month of June 2016 in the ordinary course in the week ended May 28, 2016.

Other Unsecured Creditors of the Company

44. As at May 20, 2016 the Company has approximately \$6.5 million in accrued and unpaid unsecured liabilities (excluding professional fees and disbursements that the Company will pay prior to the commencement of these CCAA proceedings), including:

- (a) suppliers: \$5.2 million;
- (b) outstanding gift cards and credit notes: \$281,000 and \$509,000, respectively, the majority of which were assumed on July 1, 2015 in connection with the Acquisition;

- (c) accrued sales taxes: \$75,000 (accrued since the last remittance period that ended on May 28, 2016); and
- (d) other non-supplier creditors: \$459,000.

45. The Company intends to honour outstanding gift card and credit notes during these proceedings, and to honour existing warranty and return policies for so long as its stores continue operating.

III. SECURED CREDITORS

A) CIBC Credit Agreement

46. The Company is a party (as co-borrower with Grafton) to a credit agreement dated as of February 12, 2016 with CIBC, as agent and as lender, pursuant to which CIBC has agreed to provide to the Company and Grafton revolving credit facilities (the “**CIBC Credit Facility**”) in the maximum aggregate principal amount of \$35 million (the “**CIBC Credit Agreement**”). Attached hereto and marked as Exhibit “A” is a true copy of the CIBC Credit Agreement.

47. Availability under the CIBC Credit Agreement is calculated in accordance with a borrowing base formula. The borrowing base formula is calculated separately for each of the Company and Grafton and has historically been aggregated for the purpose of determining availability under the CIBC Credit Facility (i.e., the Company could borrow against the value of the Grafton inventory, and vice versa, if at any time its borrowing base did not support its liquidity requirements). As discussed in more detail below, this shared availability concept has been discontinued in the DIP Forbearance Agreement.

48. As of May 20, 2016, the Company had borrowed \$7,485,568 under the CIBC Credit Agreement and Grafton has borrowed \$23,014,138. Pursuant to the terms of the CIBC Credit Agreement, the Company is jointly and severally liable with Grafton for all indebtedness outstanding under the CIBC Credit Facility.

49. Each of the Company and Grafton has also guaranteed the obligations of the other under the CIBC Credit Agreement and pledged its assets as collateral for that guarantee. The guarantee issued by the Company in favour of CIBC is hereinafter referred to as the "Company Guarantee".

50. The obligations of the Company under the CIBC Credit Agreement and the Company Guarantee are secured by, among other things, a general security agreement (the "**Company GSA**") and a moveable hypothec (the "**Company Hypothec**"), each dated as of February 12, 2016, pursuant to which the Company has granted to CIBC a continuing security interest in all of its present and after-acquired personal property. A true copy of the Company GSA and the Company Hypothec is attached hereto as Exhibit "B".

51. The Company received a letter from CIBC dated April 21, 2016 (the "**CIBC ROR Letter**") in which CIBC declared certain defaults and events of default to have occurred under the CIBC Credit Agreement and noted that, as a result, certain additional reporting and operational constraints were triggered and in effect. In that letter CIBC reserved all of its rights and remedies against the Company and Grafton. Attached hereto and marked as Exhibit "C" is a true copy of the CIBC ROR Letter.

52. On or about April 22, 2016 the Company received a further letter from CIBC in which CIBC confirmed that, notwithstanding the delivery of the CIBC ROR Letter and the

provisions of the CIBC Credit Agreement, the CIBC Credit Facility was not accelerated and the commitment to make the CIBC Credit Facility available had not terminated.

53. The Company and Grafton entered into a forbearance agreement with CIBC dated as of June 6, 2016 (the “**DIP Forbearance Agreement**”) by which CIBC agreed to forbear from exercising its rights and remedies under the CIBC Credit Agreement until the earlier of the *Termination Date* (as defined in the *DIP Forbearance Agreement*) and the occurrence or existence of a *Terminating Event* (as defined in the *DIP Forbearance Agreement*) in consideration of certain representations and covenants from the Company and Grafton and certain amendments to the CIBC Credit Agreement. Attached hereto and marked as Exhibit “D” is a redacted true copy of the *DIP Forbearance Agreement*. The only redaction relates to the Grafton cash flow forecast attached to the *DIP Forbearance Agreement*.

54. Among other amendments to the CIBC Credit Agreement in the *DIP Forbearance Agreement*, the total commitment by CIBC in the amount of \$35 million was redesignated in the amount of \$27 million and \$8 million as between Grafton and the Company, respectively (with the commitment of \$8 million being reduced to \$2.2 million following receipt by CIBC of a distribution in the amount of the net minimum guarantee payable pursuant to the *Agency Agreement* less the *Holdback Amount* (as defined below)). Furthermore, the borrowing bases were divided such that the components for calculating the borrowing base for each of Grafton and the Company must be solely attributable to Grafton and the Company, respectively. As a result, the Grafton collateral is no longer available to support the Company’s availability and the Company’s collateral is no longer available to support Grafton’s availability. Generally, borrowings under the CIBC Credit Agreement by each of Grafton and the Company are now limited to the lesser of \$27 million and Grafton’s borrowing base and \$8 million (subject to

reduction as described above) and the Company's borrowing base, respectively, however, Grafton and the Company are permitted to borrow in excess of their respective borrowing bases in such amounts and during such periods as set forth in the GFI Cash Flow and the Approved CCAA Cash Flow (each as defined in the DIP Forbearance Agreement), respectively. The proceeds of the Company's borrowings must be used for funding its costs and expenses solely in accordance with the Approved CCAA Cash Flow. Notwithstanding the redesignation of the aggregate availability under the CIBC Credit Facility, the Company and Grafton remain jointly and severally liable for the full amount of the aggregate indebtedness to CIBC.

55. Further, the CIBC Credit Agreement was amended such that (i) Canadian Prime Rate Loans and Base Rate Loans to each of Grafton and the Company shall be made at the Canadian Prime Rate plus 1% per annum and the Base Rate plus 1% per annum, respectively; (ii) each of Grafton and the Company shall pay an Unused Line Fee in the amount of 0.5% per annum; and (iii) the Letter of Credit Fee in respect of documentary letters of credit and standby letters of credit was increased to 1.75% per annum and 2.50% per annum, respectively.

56. The DIP Forbearance Agreement requires that the Company implement, and operate under, a blocked account arrangement which requires the Company to convert each of its accounts (including those with banks other than CIBC) that receive proceeds of inventory and other property subject to CIBC's security into a blocked account subject to a blocked account agreement. Those blocked account arrangements were previously contemplated in the CIBC Credit Agreement and substantially implemented, and require that all cash receipts of the Company be deposited into designated accounts subject to CIBC's security interest and blocked account agreements, and swept on a daily basis into a consolidated account held by CIBC (the "**Consolidated Account**"). Since May 2016, the blocked account arrangements have been in

place in respect of all Company accounts and all receipts of the Company have been deposited into the blocked accounts, swept by CIBC on a daily basis into the Consolidated Account, and applied against the indebtedness of the Company to CIBC. The DIP Forbearance Agreement requires that these arrangements continue throughout the CCAA proceedings, subject to certain exceptions. All borrowings by the Company after the CCAA filing date will be advances by CIBC under the DIP Forbearance Agreement.

B) GSO Credit Agreement & Guarantee

57. In connection with the negotiation and execution of the CIBC Credit Agreement, and related intercreditor issues, GSO required that the Company execute a secured guarantee in its favour. The Company is liable to GSO pursuant to a guarantee agreement dated February 12, 2016 executed by the Company, as guarantor, in favour of GSO (the “**GSO Guarantee**”).

58. Pursuant to the terms of the GSO Guarantee, the Company unconditionally and irrevocably guarantees the prompt and complete payment of, among other things, all obligations of Grafton to GSO under an amended and restated credit agreement dated as of June 16, 2009 (as amended pursuant to each of the amendments dated as of April 12, 2010, June 11, 2010, March 18, 2011, December 31, 2012, June 17, 2014, July 7, 2015, July 23, 2015 and February 12, 2016, as may be further amended, restated, supplemented, replaced or otherwise modified from time to time (collectively, the “**GSO Credit Agreement**”). Attached hereto and marked as Exhibit “E” is a true copy of the GSO Credit Agreement. Attached hereto and marked as Exhibit “F” is a true copy of the and the GSO Guarantee.

59. The GSO Credit Agreement provides for a term credit facility in the principal amount of approximately \$32 million maturing on October 4, 2016. Advances under the GSO

Credit Agreement bear interest at the rate of 15% per annum. The outstanding indebtedness under the GSO Credit Agreement (including accrued interest) as of May 20, 2016 was approximately \$33,024,000.

60. The obligations of the Company to GSO under the GSO Guarantee are secured by, among other things, a general security agreement (the “**GSO GSA**”) and a moveable hypothec (the “**GSO Moveable Hypothec**”), each dated February 12, 2016, pursuant to which the Company granted a security interest in all of its present and after-acquired personal property. A true copy of the GSO GSA and the GSO Moveable Hypothec is attached hereto and marked as Exhibit “G”.

61. With the consent of GSO, Grafton did not make interest payments due in April and May, 2016, which were both in the amount of \$374,660. Grafton and the Company are therefore each in default of their obligations to GSO.

62. The Company and Grafton entered into a forbearance agreement with GSO, among others, dated as of June 6, 2016 (the “**GSO Forbearance Agreement**”) pursuant which GSO agreed to forbear from exercising its rights and remedies under the GSO Credit Agreement until the earlier of November 30, 2016 and the occurrence or existence of a Terminating Event (as defined in the GSO Forbearance Agreement) in consideration of certain representations and covenants from the Company and Grafton and certain amendments to the GSO Credit Agreement. Among those amendments to the GSO Credit Agreement, the maturity date was extended to January 31, 2017. Furthermore, from April 30, 2016 to the earlier of the Maturity Date and a Terminating Event, unless otherwise paid in cash, the interest due and owing under the GSO Credit Agreement will be capitalized and added to principal. The capitalized interest

will bear interest at the current interest rate plus the default rate of 2%. Attached hereto and marked as Exhibit “H” is a redacted true copy of the GSO Forbearance Agreement. The only redaction relates to the Grafton cash flow forecast attached to the GSO Forbearance Agreement.

C) Intercreditor Agreement

63. CIBC and GSO are party to an intercreditor agreement dated as of February 12, 2016 (the “**Intercreditor Agreement**”) pursuant to which CIBC and GSO agreed to, among other things, the relative priority of their security interests in the property of the Company. Attached hereto and marked as Exhibit “I” is a true copy of the Intercreditor Agreement.

64. With respect to the relative priority of CIBC and GSO in the Company’s property, in summary, the Intercreditor Agreement provides that CIBC will have a first priority security interest in the accounts receivable and inventory of the Company (with GSO having a second priority security interest in such collateral), and GSO will have a first priority security interest in the furniture, fixtures and equipment of the Company (with CIBC having a second priority security interest in such collateral).

D) PPSA Searches

65. Fasken Martineau DuMoulin LLP, legal counsel to the Company, conducted a search of registrations made against the Company as of May 30, 2016 under to the *Personal Property Security Act* (Ontario) and similar registration systems in each of the provinces of Canada in which the Company operates. Attached hereto and marked as Exhibit “J” is a true copy of the search results. The Company does not own any real property.

66. Other than registrations in favour of CIBC and GSO, the only other registration appears to be in favour of Xerox Canada Ltd. (“Xerox”) (in Ontario only) with respect to its interest in specific collateral (File No. 710539839). The court-ordered charges sought by the Company in this Application are not proposed, at this time, to rank in priority to the registration in favour of Xerox, to the extent it represents a validly perfected and enforceable security interest.

IV. FINANCIAL DIFFICULTIES & THE NEED FOR CCAA PROTECTION

A) Financial Difficulties

67. As discussed above, the Company experienced significant supply chain issues and unanticipated cost increases as a result of GBG being unable to supply product for the Company’s Fall 2015 and Spring 2016 collections. Merchandise purchased from alternate vendors came at higher costs than initially anticipated because of, among other things, fluctuations in foreign exchange rates and significant incremental freight charges incurred by the Company to ship merchandise by air to ensure it arrived in time to properly stock its stores. As a result of the delayed delivery of its product, the Company holds excess inventory positions which has negatively impacted its gross margins.

68. In addition, certain of the Company’s retail locations have been underperforming. The poor sales performance has exacerbated the excess inventory position leading to significant liquidity constraints.

B) Financial Position

69. The internal unaudited financial statements for the quarter ended April 30, 2016 reflect a net loss of \$2.2 million.

70. Attached hereto is a true copy of the internal financial statements, prepared during the past year for the Company, which are marked as Exhibit "K".

C) Responses to Financial Difficulties

71. On or about March 16, 2016 the Consultant was engaged on behalf of the Company to assist in reviewing its present and projected financial performance and to consider strategic alternatives available to the Company. Following the Consultant's preliminary review and discussions with certain of the Company's stakeholders, including CIBC and GSO, the Company determined to halt further orders of inventory and, with the assistance of the Consultant, to commence the SISP.

72. The SISP was initiated on April 21, 2016 by distribution of a teaser document (the "Teaser") to potential interested parties that described the opportunity and invited interested parties to consider a potential transaction with or involving the Company by gaining access to a confidential data room upon execution of a non-disclosure agreement. The Teaser was distributed to approximately 100 potential interested parties, including retailers, private equity firms and liquidation firms. Attached hereto and marked as Exhibit "L" is a true copy of the Teaser.

73. On or about May 16, 2016 the Company deposited in the data room a request for proposals ("RFP") which outlined the process and timing for submission of offers. At the time the RFP was deposited in the data room there were nine parties who had executed a non-

disclosure agreement and had been provided with access to the data room. Those nine parties included potential strategic and financial buyers/investors and liquidators. Attached hereto and marked as Exhibit “M” is a true copy of the RFP.

74. Among other information, the RFP advised interested parties that the deadline for submission of binding offers was 2:00 pm E.T. on May 19, 2016 (subsequently extended at the request of certain interested parties to 5:00 pm E.T. on May 21, 2016).

75. The SISP was designed in the hopes of attracting going concern offers and did not mandate an insolvency proceeding. The Company, in consultation with the Consultant, anticipated that offers would fall within one of three categories: (i) sale proposals - likely on a going concern or en bloc basis, (ii) liquidation proposals, and (iii) investment proposals. With respect to the first two categories, the RFP contemplated that the Company would deposit a form of asset purchase agreement (for sale proposals) and a form of liquidation services agreement (for liquidation proposals) to be used by interested parties in submitting an offer. Because investment proposals could take several different forms the RFP did not contemplate the use of a base form of investment agreement. Rather, parties interested in making an investment proposal would be permitted to submit that proposal in a form of their choosing, provided it included sufficient transaction details that the Company and the Consultant could understand and assess the commercial and legal terms of the proposal.

76. Following constructive discussions with a number of interested parties with respect to the sale or investment opportunity and significant activity in the data room, the Company ultimately received two proposals by the extended bid deadline of May 21, 2016 at 5:00 pm E.T. Both of those offers were binding liquidation proposals that contemplated a

liquidation in the context of restructuring proceedings. The Company, in consultation with the Consultant, and its legal advisors, reviewed the two proposals and determined that the proposal from the Agent was the superior proposal. I understand that a copy of a chart comparing the two proposals will be attached as a confidential Appendix to the report of the Proposed Monitor, to be filed in connection with this Application.

77. It should be noted that a significant shareholder of Grafton is a company related to Gordon Brothers Group (“Gordon”), which has a retail liquidation arm. Both Gordon and two directors of the Company who have had a close connection with Gordon were excluded from discussions regarding the progress of the SISP and from deliberations and negotiations over the proposals received. The Agent is not related to Gordon.

D) The Agency Agreement

78. The Company and the Agent entered into an agency agreement made as of June 6, 2016 (the “Agency Agreement”) pursuant to which the Company has engaged the Agent as its exclusive agent for the limited purpose of (i) selling the Company’s Merchandise (as defined in the Agency Agreement) located at the Company’s retail store locations listed at Exhibit 1A to the Agency Agreement (the “Stores”) and in the Distribution Centre; and (ii) disposing of the Company’s furniture, fixtures and equipment (“Owned FF&E”) located at the Stores and in the Distribution Centre (together, the “Sale”), in each case under the supervision of the Proposed Monitor and subject to the Company obtaining the Agency Agreement Approval Order. Attached hereto and marked as Exhibit “N” is a redacted true copy of the Agency Agreement.

79. The Agency Agreement is not effective unless (i) the Company has obtained the Agency Agreement Approval Order by no later than 5:00 p.m. (Eastern Time) on June 13, 2016,

or such later date as the parties may agree; and (ii) the Agency Agreement Approval Order has not been stayed, varied, or vacated and there has been no application to restrain or prohibit the completion of the Sale.

80. The Sale term is to commence on the first business day following the later of the issuance of the Agency Agreement Approval Order and the payment of the Initial Guaranty Payment (as defined in the Agency Agreement), or as soon as is practicable thereafter, but in any event no later than June 14, 2016 (the “**Sale Commencement Date**”), and shall continue until September 22, 2016 (unless extended by mutual agreement of the Company and Agent, or accelerated by the Agent, in each case pursuant to the terms of the Agency Agreement) (the “**Sale Term**”).

81. The Sale is to be conducted in accordance with the sales guidelines appended as Exhibit 8.1 to the Agency Agreement.

82. A summary of the other material terms of the Agency Agreement include the following:

- (a) the value of Merchandise at the Stores on the Sale Commencement Date or received at the Stores within 14 days thereafter (and any inventory at the Distribution Centre that the Agent requires to be maintained at the Distribution Centre) will be included in the calculation of a net minimum guarantee to be paid by the Agent to the Company, which is to be calculated as a percentage of the aggregate cost of the aforesaid Merchandise to the Company (which cost is assumed to be not less than \$11 million) (the “**Guaranteed Amount**”);

- (b) Merchandise received at the Stores after the 14 day period referred to above will be valued at a discounted rate calculated pursuant to a prevailing discount formula;
- (c) to the extent the proceeds from the sale of Merchandise exceed the Guaranteed Amount (plus the Agent's expenses and a commission payable to the Agent calculated as a percentage of the aggregate cost of Merchandise at the Stores), then all remaining proceeds of the sale are paid (i) 100% to the Company up to a certain amount; and (ii) the remainder to be shared equally between the Company and the Agent (the "**Sharing Formula**");
- (d) as security for the Agent's obligations under the Agency Agreement to pay the Guaranteed Amount, the Agent shall provide the Company with a letter of credit naming the Company as beneficiary in the aggregate original face amount equal to the sum of 15% of the estimated Guaranteed Amount;
- (e) the Agent will receive a commission of 18% (plus reimbursement of the Agent's costs) for the sale of Owned FF&E;
- (f) provided all payments are made to the Company pursuant to the Agency Agreement, and that no event of default has occurred thereunder, all remaining Merchandise becomes the property of the Agent at the end of the Sale Term, free and clear of all encumbrances;
- (g) the Company shall be permitted to transfer Merchandise between and among the Stores;

- (h) as directed by the Agent and agreed to by the Company, acting reasonably, the Company shall purchase additional inventory of like nature and quality to include in the sale (“**Additional Merchandise**”), provided that (i) the Additional Merchandise shall not exceed \$1.5 million at cost in the aggregate; (ii) the Additional Merchandise will be distributed among the Stores such that no Store will receive more than 15% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lesser quality to the Merchandise. The cost of purchasing such Additional Merchandise shall be an expense of the Company and the proceeds of the sale of such Additional Merchandise shall be Proceeds (as defined in the Agency Agreement) to be distributed in accordance with the provisions of the Agency Agreement;
- (i) the Agent may, on at least seven days’ notice to the Company, terminate the Sale at any Store in its sole discretion, provided such termination shall be effective on either the 15th or the applicable Vacate Date (as defined in the Agency Agreement); and
- (j) the Agent shall vacate each Store in favour of the Company or its representatives or assignee, remove all Merchandise that remains at that Store (subject to the right to abandon, neatly in place, the Owned FF&E unless otherwise directed by the Company) and leave the applicable Stores in an orderly and “broom swept” condition.

83. In accordance with the terms of the Agency Agreement, the Agent paid the Deposit to the Company upon execution and delivery of the binding offer, which Deposit is held

in the Consultant's account for and on behalf of the company. It is contemplated that the Agent will pay the Initial Guaranty Payment to the Monitor, for and on behalf of the Company, within two business days of the issuance of the Agency Agreement Approval Order. The Monitor will hold \$500,000 of the Guaranteed Amount (which consists of the Deposit and the Initial Guaranty Payment) in trust, to be applied on account of the professional fees that are the subject of the Administration Charge, if necessary (the "**Holdback Amount**"). The remainder of the Guaranteed Amount will be held by the Monitor pending receipt of an Order of the Court authorizing and directing the Monitor to distribute the Guaranteed Amount (less the Holdback Amount) to CIBC.

84. After the payment of the Guaranteed Amount, the proceeds from the liquidation sale will be collected by the Company and deposited into the Company's accounts, which are subject to the blocked account agreements, and swept by CIBC into the Concentration Account. On the written direction of the Company with the approval of the Monitor, CIBC will distribute the sale proceeds held in the Concentration Account on the following basis: (i) remit to the Monitor an amount sufficient to pay sales taxes accruing from the liquidation sale, which will be held in escrow by the Monitor and remitted on behalf of the Company as required by applicable legislation, and (ii) to the Agent, the Company, or GSO, as applicable, in accordance with the terms of the Agency Agreement.

85. The Agency Agreement also provides for a first ranking charge to be granted in the Agency Agreement Approval Order in favour of the Agent (the "**Agent's Charge**") in all of the Merchandise, the Additional Merchandise, the Proceeds, the Gross FF&E Proceeds and the Agent's share of the proceeds from the sale of Merchant Consignment Goods (each as defined in the Agency Agreement) (collectively, the "**Charged Property**") as security for all of the

obligations of the Company to the Agent under the Agency Agreement, provided, however, that the Agent's Charge is subordinate to all other Court-ordered charges and all encumbrances in favour of CIBC and GSO in respect of certain amounts that are payable to the Company under the Agency Agreement (such amounts are defined in the Agency Agreement as any unpaid portion of the Guaranteed Amount, the Merchant's First Portion of Sharing Recovery Amount, the Merchant's Share Recovery Amount, Net FF&E Proceeds and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to Merchant) (collectively, the **"Unpaid Company Entitlements"**). The Agent's Charge shall not extend to any property of the Company other than the Charged Property. I understand that CIBC and GSO are each amenable to the Agent's Charge.

E) The Company is Insolvent

86. As described above, CIBC has declared the Company in default under the CIBC Credit Agreement and the Company does not have sufficient liquidity to repay the outstanding indebtedness to CIBC in full if CIBC should make a demand for repayment. As of May 20, 2016 there was approximately \$30,499,706 million (including accrued interest) outstanding under the CIBC Credit Agreement.

87. The Company is also liable to GSO under the GSO Guarantee in the approximate amount of \$33,024,000 (including accrued interest) and the Company is unable to satisfy this obligation in full if required by GSO.

88. Accordingly, and as set out elsewhere in this affidavit, the Company is insolvent. It cannot meet its liabilities as they come due and, without the protection of the CCAA and the benefit of the DIP Forbearance Agreement and the GSO Forbearance Agreement, the ability of

the Company to conduct an orderly liquidation of its assets for the benefit of its stakeholders may be seriously impaired.

89. The Company, in consultation with the Proposed Monitor, has determined that it is in the best interests of the Company and its stakeholders to enter into the Agency Agreement. The protection of the CCAA, including the stay of proceedings and interim financing which are available thereunder, will enable the Company to maintain operations while pursuing the transactions contemplated under the Agency Agreement to maximize value for the Company's various stakeholders. As described above, the Company initiated the SISP, developed in consultation with the Consultant, and is seeking Court approval of the Agency Agreement which was the best proposal presented to the Company received pursuant to the SISP.

V. DIP FORBEARANCE AGREEMENT/DIP FINANCING

90. As discussed above, on June 6, 2016, the Company, Grafton and CIBC entered into the DIP Forbearance Agreement pursuant to which CIBC has agreed, in the context of the CCAA proceedings in respect of the Company, to (a) forbear from enforcing its rights under the CIBC Credit Agreement and the other loan documents until the earlier of the Termination Date (as such term is defined in the DIP Forbearance Agreement) and the occurrence or continuance of a Terminating Event (as such term is defined in the DIP Forbearance Agreement), and (b) allow the Company to continue to borrow under the revolving facility in an amount not to exceed the lesser of \$8 million (subject to reduction to \$2.2 million on payment of the Guaranteed Amount, less the Holdback Amount) and the Company's borrowing base formula, and in excess of the Company's borrowing base in such amounts and during such periods as set forth in the Approved CCAA Cash Flow, to fund the Company's operations during the CCAA proceedings.

91. Among other terms, the DIP Forbearance Agreement is conditional upon (a) the payment of a forbearance fee in the aggregate amount of \$75,000, (b) approval of the Company's and Grafton's projected cash flow statements by CIBC, and (c) an Initial Order in the CCAA proceedings that, among other terms, (i) grants CIBC a priority charge on the assets of the Company (excluding certain Term Priority Collateral (as defined in the Intercreditor Agreement), the Administration Charge and the Agent's Charge (if the Agency Agreement Approval Order is granted, and subject to the subordination of the Agent's Charge in respect of any Unpaid Merchant's Entitlements) in respect of all advances made on or after the time of granting the Initial Order, (ii) provides that CIBC shall be treated as an "unaffected creditor" in the CCAA proceedings, (iii) directs that at no time on or after the date of the Initial Order will the property of the Company be subject to a court ordered charge of any person ranking in priority to the CIBC security and charge, without CIBC's consent; and (iv) authorizes the Company to use the Company's post-CCAA filing receipts to pay the Company's pre-filing indebtedness under the CIBC Credit Agreement. The DIP Forbearance Agreement expressly provides that post-filing borrowings shall not be used to pay pre-filing indebtedness to CIBC.

92. As discussed above, the DIP Forbearance Agreement requires that the blocked account arrangements continue throughout the CCAA proceedings and, as result, all borrowings by the Company after the CCAA filing date will be advances by CIBC under the DIP Forbearance Agreement.

VI. CASH-FLOW FORECASTS

93. Attached hereto and marked as Exhibit "O" is a true copy of a projected cash flow statement with respect to the Company for the 7 week period May 29, 2016 to July 16, 2016 (the "Cash Flow Statement").

94. The Cash Flow Statement demonstrates the cash needs of the Company during the forecast period and demonstrates that, assuming the DIP Forbearance Agreement is approved and funds are advanced to the Company in accordance with its terms, the Company will have sufficient liquidity to fund its post-filing obligations and the costs of these CCAA proceedings during the cash flow period.

95. The Cash Flow Statement has been prepared with the assistance of the Proposed Monitor and is accompanied by the prescribed representations in accordance with the CCAA.

VII. RELIEF SOUGHT

A) Stay of Proceedings

96. The Company requires a broad stay of proceedings to allow it to continue to operate and maintain the status quo while it completes the transactions contemplated under the Agency Agreement with a view to maximizing benefits to its creditors and other stakeholders.

97. In addition to a stay of proceedings against the Company and its assets, the Company is seeking a stay of proceedings against its officers and directors to ensure that they are able to focus their efforts on the orderly liquidation of the Company's assets and related activities (including reconciling payments under the Agency Agreement) and to prevent creditors and others from seeking to do indirectly what they cannot do directly by asserting claims or other relief relating to the debts and obligations of the Company against its officers and directors.

B) Approval of the DIP Forbearance Agreement & DIP Charge

98. As reflected in the Cash-Flow Statement, the DIP Forbearance Agreement is intended to provide the Company with sufficient capital to (i) maintain its ongoing operations

during the course of these CCAA proceedings, including payment of employees; (ii) fund the costs of these proceedings; and (iii) pursue an orderly liquidation of the Company's assets.

99. It is a condition of the DIP Forbearance Agreement that in addition to its existing contractual security, CIBC be granted a priority court-ordered charge on all the assets, rights, undertakings and properties of the Company (the "**Property**") as security for amounts advanced to the Company under the DIP Forbearance Agreement (the "**DIP Charge**"), provided, however, that the DIP Charge will not charge the Term Priority Collateral (primarily the Company's furniture, fixtures and equipment) and will not rank in priority to (i) the Administration Charge; and (ii) the Agent's Charge (subject to the issuance of the Agency Agreement Approval Order, and subject to the subordination of the Agent's Charge in respect of any Unpaid Merchant's Entitlements). CIBC has advised the Company that it will not advance any funds under the DIP Forbearance Agreement unless the court approves the DIP Charge. As discussed above, pursuant to the DIP Forbearance Agreement, from and after the date thereof, each of the Company and Grafton are able to borrow solely upon their own availability (as determined in accordance with the borrowing base formula). The DIP Charge will stand as security for the borrowings of the Company, and not Grafton, during the post-filing period.

100. I understand that both CIBC and GSO are amenable to the DIP Charge. The only other secured creditor of the Company appears to be Xerox. As stated above, the court-ordered charges sought by the Company in this Application are not proposed, at this time, to rank in priority to the registration in favour of Xerox, to the extent it represents a validly perfected and enforceable security interest.

101. The Cash Flow Statement demonstrates that, without financing through the cash flow period, the Company is unable to fund its operations or pursue the sale transactions contemplated in the Agency Agreement. If the court approves the DIP Forbearance Agreement and funds are made available thereunder, the Cash Flow Statement projects that the Company will have sufficient funding to continue its operations and to pursue the orderly liquidation of its assets during the projected cash-flow period.

102. It is an express term of the DIP Forbearance Agreement that advances made thereunder cannot be used to satisfy pre-filing obligations under the CIBC Credit Agreement. It is contemplated that a substantial portion of the Guaranteed Amount (subject to the Holdback Amount described above and the issuance of the distribution order by the Court) will be distributed to CIBC following receipt from the Agent and applied in reduction of pre-filing amounts owing by the Company under the CIBC Credit Agreement. The Cash-Flow Statement, approval of which is a condition of the DIP Forbearance Agreement and the GSO Forbearance Agreement, contemplates the distribution of the Guaranteed Amount to CIBC (subject to the Holdback Amount). Given the magnitude of this distribution, and that it is out of the ordinary course, the Company anticipates requesting approval of the Court for this distribution at a subsequent hearing.

103. In addition, certain receipts from the liquidation sale (such as amounts, if any, payable to the Company under the Sharing Formula) and the Company's other operations (for example, receipts from pre-filing credit card charges) will be swept and applied, in reduction of pre-filing amounts owing by the Company under the CIBC Credit Agreement, or distributed in the ordinary course. The remaining proceeds from the liquidation sale will be deposited into the Company's accounts, which are subject to the blocked account agreements, and swept by CIBC

into the Concentration Account. CIBC will distribute the proceeds to the Company, the Monitor or the Agent, as applicable, as directed in accordance with the terms of the Agency Agreement.

104. Prior to executing the DIP Forbearance Agreement, the Company considered, among other things, the following factors:

- (a) the Cash-Flow Statement indicates that the DIP loan will provide the Company with sufficient liquidity to fund its ongoing operations while pursuing an orderly liquidation of its assets throughout the projected cash-flow period;
- (b) it is expected that the Company will continue to operate its stores, with continued employment of its store-level employees and ongoing payment of rents, while it pursues the liquidation sale;
- (c) the Company has the support of its primary secured creditor(s) CIBC (which has agreed to advance the DIP loan) and GSO;
- (d) as the existing operating lender with first registered security on the accounts receivable and inventory of the Company, CIBC is best positioned to provide the DIP loan on commercially reasonable terms;
- (e) the DIP loan is necessary to permit the Company to maintain its operations while it pursues the liquidation sale; and
- (f) the Proposed Monitor has indicated that it is supportive of the DIP Forbearance Agreement and the financing contemplated therein.

C) Approval of the Administration Charge

105. The Company is seeking a charge on the Property, in priority to all other charges (with the exception of the Agent's Charge), in the maximum amount of \$500,000 (the "**Administration Charge**") to secure the fees and disbursements of the Monitor, counsel to the Monitor, independent counsel to the directors of the Company and counsel to the Company, in each case incurred in connection with services rendered to the Company both before and after the commencement of these CCAA proceedings.

106. It is important to the success of the orderly liquidation of the Company's assets to have the Administration Charge in place to ensure the continued involvement of critical professionals.

107. The Agency Agreement, if approved, provides that the Agent will be granted a first ranking charge on substantially all of the Company's assets as security for the obligations of the Company to the Agent under the Agency Agreement (subject to the subordination of the Agent's Charge in respect of any Unpaid Merchant's Entitlements). To ensure that there are sufficient funds to satisfy the Administration Charge, it is proposed that the Holdback Amount be paid to the Monitor out of the Guaranteed Amount and held by the Monitor as security for the Administration Charge.

108. The Company has worked with the Proposed Monitor and the other professionals to estimate the proposed quantum of the Administration Charge, and in so doing, has taken into account the amounts held by these firms as retainers, being: \$120,000 (Fasken), \$55,000 (Cassels), \$175,000 (Richter) and \$10,000 (Lax O'Sullivan).

D) Approval of the D&O Indemnity and Charge

109. To ensure the ongoing stability of the Company's business during the CCAA period, the Company requires the continued participation of its directors and officers.

110. The Company is seeking customary provisions staying all proceedings against the directors and officers of the Company with respect to all claims against the directors or officers that relate to any obligations of the Company whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of the Company.

111. I understand that in certain circumstances directors can be held liable for certain obligations of a company, including those owing to employees and government entities. As of May 20, 2016, the Company was potentially liable for accrued but unpaid vacation pay, wages, and source deductions during the post-filing period.

112. Grafton maintains directors' and officers' liability insurance that extends to its subsidiaries, including the Company (the "**D&O Insurance**"). The current D&O Insurance policies include an aggregate amount of \$10 million in coverage.

113. This coverage is subject to certain retentions, deductibles, exclusions, or some combination of the foregoing, all of which create a degree of uncertainty.

114. The directors and officers of the Company have indicated that, due to the risk of personal exposure associated with the Company's aforementioned liabilities, they will not continue their service with the Company during the post-filing period unless the Initial Order establishes an indemnity in their favour and grants a charge on the Property in the amount of \$500,000 (the "**D&O Charge**") on customary terms. The D&O Charge is proposed to rank immediately after the Administration Charge and the DIP Charge, and will also rank behind the

Agent's Charge (if the Agency Agreement Approval Order is granted, and subject to the subordination of the Agent's Charge in respect of any Unpaid Merchant's Entitlements).

115. The D&O Charge will allow the Company to continue to benefit from the expertise and knowledge of its directors and officers. The Company believes the D&O Charge is reasonable in the circumstances. I am informed by Gilles Benchaya of the Proposed Monitor and believe that the Proposed Monitor is supportive of the indemnity and D&O Charge and its quantum. CIBC and GSO have been consulted in respect of the quantum of the proposed D&O Charge and I understand that they are supportive of the charge.

E) Approval of the Agency Agreement

116. In a separate motion returnable June 13, 2016, the Company is seeking Court approval of the Agency Agreement and an Order authorizing it to carry out the transactions contemplated therein.

117. The Company, with the assistance of the Consultant, administered a comprehensive SISP that was designed to attract a broad range of interested parties and determine whether a transaction was available that would address the liquidity and other issues facing the Company. Through the SISP the Company received two proposals, both of which were from liquidation firms. The Company reviewed the two liquidation proposals with the Consultant, in consultation with their legal advisors, and determined that the proposal from the Agent was the superior proposal.

118. The Agency Agreement provides the highest likelihood of recovery for the Company and its stakeholders in the circumstances and, together with the DIP Forbearance

Agreement and the GSO Forbearance Agreement, will allow the continued operation of the Company's stores, at least for a time while the liquidation sale is proceeding.

119. It is contemplated (and reflected in the Cash Flow Statement) that any amount for which employees have a claim under subsections 81.4 and 81.5 of the *Bankruptcy and Insolvency Act* (Canada) will be paid. The Company does not maintain a pension plan for its employees.

120. The Company will seek approval of the Agency Agreement at a motion scheduled to be heard on June 13, 2016 (subject to the Court granting the Initial Order), so as to allow interested parties sufficient time to consider the matter and respond, as appropriate.

F) Approval of the GSO Forbearance Agreement

121. The Company is seeking approval of the GSO Forbearance Agreement. Under the GSO Forbearance Agreement GSO has agreed, in the context of CCAA proceedings in respect of the Company, to forbear from enforcing its rights under the GSO Credit Agreement until the earlier of November 30, 2016 and the occurrence or existence of a Terminating Event (as defined in the GSO Forbearance Agreement).

122. The GSO Forbearance Agreement will provide the Company with stability during these CCAA proceedings which will allow the Company to focus its efforts on the orderly liquidation contemplated in the Agency Agreement.

G) The Monitor

123. Richter has consented to act as Monitor of the Company, subject to court approval. Attached hereto and marked as Exhibit "P" is a true copy of the written consent of Richter to act as Monitor herein.

124. Richter is a trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

125. The Proposed Monitor is an affiliate of the Consultant. The Company did not have a prior business relationship with the Consultant or the Proposed Monitor or any of their affiliates before the engagement of the Consultant in March 2016. Given the role of the Consultant to date I anticipate that there will be a significant amount of overlap between the personnel who have been involved in the Consultant engagement to date, and those who will be involved in carrying out the duties and activities of the Monitor going forward. I believe this is sensible and efficient and in the interest of the Company's stakeholders. The primary secured creditors, CIBC and GSO, are aware of the relationship between the Consultant and the Proposed Monitor and have both consented to the appointment of the Proposed Monitor as Monitor in these proceedings.

126. It is my understanding that, while the SISP didn't require an insolvency proceeding, the Consultant was mindful of the possibility that such a proceeding might be desirable (particularly in a liquidation scenario) and structured the SISP accordingly.

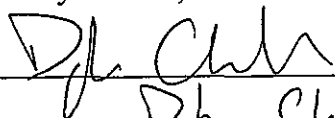
VIII. URGENCY

127. The Company requires immediate access to the DIP facility to normalize its operations and to secure the ongoing supply of services from its employees and other service providers to allow it to proceed with the orderly liquidation of its assets. To maximize the time available to complete the transactions contemplated under the Agency Agreement, and to maximize the recovery available to the Company and its stakeholders, it is imperative that the Company commence the orderly liquidation as soon as possible. This application is therefore being brought on an urgent basis.

IX. PURPOSE OF AFFIDAVIT

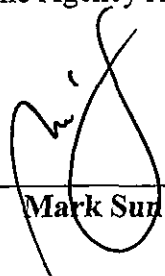
128. I swear this Affidavit in support of the Company's Application in these proceedings and the Company's Motion for approval of the Agency Agreement.

SWORN BEFORE ME at the
City of Toronto, in the
Province of Ontario, this
6th day of June, 2016



Dyan Chochik


)
)
)
)
)



Mark Sun

Tab A

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Mark Sun sworn before me this
6th day of June 2016



A Commissioner for Taking Affidavits
Dylan Chochla

CREDIT AGREEMENT

dated as of

February 12, 2016

among

Grafton-Fraser Inc. and 2473304 Ontario Inc.

as Borrowers

and

THE GUARANTORS FROM TIME TO TIME PARTY HERETO

and

THE LENDERS FROM TIME TO TIME PARTY HERETO

as Lenders

and

CANADIAN IMPERIAL BANK OF COMMERCE

as Agent

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT is dated as of February 12, 2016 and is entered into among Grafton-Fraser Inc. and 2473304 Ontario Inc., as borrowers (each, a "**Borrower**" and together, the "**Borrowers**"), the subsidiaries of the Borrowers signatory hereto and from time to time party hereto, as Guarantors, the Lenders from time to time parties hereto, as Lenders, and Canadian Imperial Bank of Commerce, as Agent.

RECITALS

- A. The Lenders have agreed to provide certain credit facilities to the Borrower.
- B. The Guarantors have agreed to guarantee the obligations of the Borrowers in connection herewith.
- C. On the Effective Date, Canadian Imperial Bank of Commerce is the sole Lender, therefore, all references to Lenders and Agent, as at the date hereof and until such time as there is more than one Lender, mean Canadian Imperial Bank of Commerce, as Lender.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

"**Acceptance Fee**" means a fee payable by the Borrower to the Agent for the account of a Lender in Canadian Dollars with respect to the acceptance of a Bankers Acceptance or the making of a BA Equivalent Loan, calculated on the face amount of the Bankers Acceptance or the BA Equivalent Loan at a rate per annum equal to the Applicable Margin from time to time in effect on the basis of the actual number of days in the applicable Contract Period (including the date of acceptance and excluding the date of maturity) and a year of 365 days, (it being agreed that the Applicable Margin in respect of a BA Equivalent Loan is equivalent to the Applicable Margin otherwise applicable to the BA Borrowing which has been replaced by the making of such BA Equivalent Loan pursuant to Section 2.11 (h)).

"**Accounts**" means, in respect of each Credit Party, all of such Credit Party's now existing and future: (a) claims, accounts (including as defined in the PPSA, as applicable), and any and all other receivables (whether or not specifically listed on schedules furnished to the Agent), including all claims, accounts created by, or arising from, all of such Credit Party's sales, leases, loans, rentals of goods or renditions of services to its customers, including those accounts arising under any of such Credit Party's trade names or styles, or through any of such Credit Party's divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and chattel paper (including electronic chattel paper) (all as defined in the PPSA, as applicable); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or

repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment intangibles, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to such Credit Party; (j) cash and non-cash proceeds (including as defined in the PPSA, as applicable) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

"Acquisition" means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Credit Party, directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets or otherwise (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body, (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body, or (d) otherwise acquires Control of a Person engaged in a business.

"Action Request" means any request received by any Credit Party or any of its Subsidiaries from any Governmental Authority under any Environmental Law whereby such Governmental Authority requests that it take action or steps or do acts or things in respect of any property or assets in the charge, management or control of such Credit Party to remediate a matter which is not or is alleged not to be in compliance with all Environmental Laws.

"Administrative Questionnaire" means an administrative questionnaire in a form supplied by the Agent.

"Affiliate" means, (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 25% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 25% or more of any class of the voting stock (or if such Person is not a corporation, 25% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the ITA to any such Person and includes any "Affiliate" within the meaning specified in the *Canada Business Corporations Act* on the date hereof.

"Agent" means Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the Lenders hereunder, or any successor Agent appointed pursuant to Section 8.9.

"Agreement" means this credit agreement and the schedules and exhibits hereto and any amendments, restatements, supplements or other modifications to this credit agreement or the schedules or exhibits made at any time and from time to time.

"Applicable Law" means all federal, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or

affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority).

"Applicable Margin" means, with respect to any Loan, the applicable rate per annum, expressed as a percentage, set forth in the relevant column of the table below:

BA Borrowing or LIBO Rate Loan Applicable Margin	Canadian Prime Loan or Base Rate Loan Applicable Margin
1.25%	0.00%

"Applicable Percentage" means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If any Commitments have terminated or expired, the Applicable Percentages in respect of the terminated or expired Commitments shall be determined based upon the relevant Commitments most recently in effect (*i.e.*, prior to their termination or expiry), giving effect to any assignments.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Agent, in the form of Exhibit C or any other form approved by the Agent.

"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, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person, whether or not having the force of Law.

"Availability Reserves" means the following reserves, without duplication, that reduce the Borrowing Base established from time to time by the Agent, in the Agent's Permitted Discretion: (i) reserves in respect of past due rent (to the extent that the amount thereof is in arrears), (ii) Bank Product Reserves, (iii) reserves in respect of gift cards in an amount of up to 50%, (iv) reserves in respect of past due royalty, licensing or similar payments (to the extent that the amount thereof is in arrears) owing by a Credit Party to certain of its clothing suppliers from time to time, (v) reserves in respect of third party carrier payables, (vi) reserves in respect of dilution in excess of the percentage assumed by the Agent for the purpose of establishing the advance rates used to calculate the Borrowing Base, (vii) warehousemen's and bailees' charges, (viii) reserves in respect of Priority Payables and with respect to amounts that the Agent believes may be required to be paid in connection with the preservation, protection, collection or realization of Collateral, (ix) reserves in respect of amounts owing by any Credit Party to holders of Liens that may have priority over the Liens of the Lenders (regardless of whether such third party Liens are Permitted Liens) (x) reserves in respect of any accounts payable that are more than sixty-five (65) days past the date on which payment thereof is due, (xi) any reserve established by the Agent on account of statutory claims, deemed trusts or inventory subject to rights of suppliers under Section 81.1 of the BIA (generally known as the "30 day goods rule") or similar rights of reclamation under Section 81.2 of the BIA, or under any other Applicable Law, (xii) Cash Management Reserves, and (xiii) such other reserves as the Agent may at any time or times deem necessary in its Permitted Discretion as a result of negative forecasts, trends, or other circumstances or factors that could materially negatively impact the Borrower's business, operations, industry, financial condition, or assets.

"BA Borrowing" means a Borrowing comprised of one or more Bankers Acceptances or BA Equivalent Loans. For greater certainty, unless the context requires otherwise, all provisions of this Agreement which are applicable to Bankers Acceptances are also applicable, *mutatis mutandis*, to BA Equivalent Loans.

"BA Equivalent Loan" is defined in Section 2.11(h).

"Bank Product Reserves" means such reserves as the Agent may from time to time determine in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Credit Parties with respect to Bank Products then provided or outstanding; provided that in the event that any counterparty to a Swap Agreement requires that the Credit Parties provide cash collateral to secure such Swap Agreement, the amount of the Bank Product Reserve imposed by the Agent with respect to such Swap Agreement shall take into consideration the amount of such cash collateral.

"Bank Products" means any services or facilities provided to any Credit Party by any Lender or any of its Affiliates on account of (a) each Swap Agreement that is entered into after the Effective Date with any counterparty that is a Credit Party at the time such Swap Agreement is entered into, (b) leasing (but only to the extent that the Borrower and the Credit Party furnishing such lease notify the Agent in writing that such leases are to be deemed Bank Products hereunder), and (c) factoring arrangements, but excluding Cash Management Services.

"Bankers' Acceptance" and "B/A" mean an instrument denominated in Canadian Dollars, drawn by the Borrower and accepted by a Lender in accordance with this Agreement, and includes a "depository note" within the meaning of the *Depository Bills and Notes Act* (Canada) and a bill of exchange within the meaning of the *Bills of Exchange Act* (Canada).

"Base Rate" means, on any day, the annual rate of interest equal to the greater of (i) the annual rate of interest announced from time to time by CIBC and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada, and (ii) the Federal Funds Effective Rate plus 1.00%. The Base Rate is a rate set by CIBC based upon various factors including CIBC's cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans; however, CIBC may price loans at, above or below such announced rate.

"Base Rate Borrowing" means a Borrowing comprised of one or more Base Rate Loans.

"Base Rate Loan" means a Loan denominated in U.S. Dollars made by the Lenders to the Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan on which interest is payable upon the Base Rate.

"BIA" means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time (or any successor statute).

"Block Event" means (i) the occurrence of an Event of Default; or (ii) if Excess Availability is below 10% of the Borrowing Base for 5 consecutive Business Days (other than during the month of January in each year), provided that a Block Event shall terminate at such time as (A) in the case of a Block Event described in paragraph (i) above, such Event of Default shall no longer be continuing; and (B) in the case of a Block Event described in paragraph (ii) above, Excess Availability shall remain above 10% of the Borrowing Base for a period of 30 consecutive days, as applicable.

"Blocked Account Agreement" has the meaning set out in Section 2.17(c).

"Blocked Accounts" has the meaning set out in Section 2.17(c).

"Borrower" means, collectively, Grafton-Fraser Inc. and Jones New York Canada.

"Borrowing" means any availing of the Credit, which includes a Loan and the issuance of a Letter of Credit in accordance with Section 2.18, the entry into an F/X Contract in accordance with Section 2.19, and a Borrowing includes a rollover or conversion of any outstanding Loan and the provision of any Loan as required for the Agent to honour any obligations pursuant to any Letter of Credit or F/X Contract.

"Borrowing Base" means, at any time, an amount (which may not be less than zero) equal to the sum of:

- (i) 90% of the aggregate amount of all Eligible Credit Card and Debit Card Accounts Receivable,
- (ii) plus, the lesser of (A) 85% of the lower of cost or fair market value of all Eligible Inventory and without duplication, all L/C Inventory and (B) 90% (95% for the months of February to May, inclusive, for each year) of the appraised net orderly liquidation value of all Eligible Inventory and without duplication, all L/C Inventory,
- (iii) minus, an amount equal to all Priority Payables, and
- (iv) minus, an amount equal to all other Availability Reserves;

provided that the amount included in the Borrowing Base on account of Eligible In-Transit Inventory shall not exceed \$5,000,000.

"Borrowing Base Report" means the report of the Borrower concerning the amount of the Borrowing Base, to be delivered pursuant to Section 5.1, substantially in the form attached as Exhibit A.

"Borrowing Request" means a request by the Borrower for a Borrowing substantially in the form of Exhibit B.

"Business Day" means any day that is not (i) a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by Applicable Law to remain closed, and (ii) in the case of any U.S. Dollar-denominated Borrowing, any other day on which commercial banks in New York, New York are authorized or required by Applicable Law to remain closed, and (iii) in the case of any LIBO Rate Loan any other day on which commercial banks in London, England are authorized or required by Applicable Law to remain closed.

"Canadian Dollars", "Dollars", Cdn.\$" and "\$" refer to lawful currency of Canada.

"Canadian \$ Equivalent" means, on any day, the amount of Canadian Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of another currency based on the spot rate at which Canadian Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Canadian Prime Borrowing" means a Borrowing comprised of one or more Canadian Prime Loans.

"Canadian Prime Loan" means a Loan denominated in Canadian Dollars made by the Lenders to the Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the Canadian Prime Rate.

"Canadian Prime Rate" means, the rate of interest equal to the greater of (i) the annual rate of interest publicly announced from time to time by CIBC as its reference rate of interest for loans made in Canadian Dollars to Canadian customers and designated as its "prime" rate, and (ii) the 30-day CDOR Rate plus 1.00%. The Canadian Prime Rate is a rate set by CIBC based upon various factors including CIBC's costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. However, CIBC may price loans at, above or below such announced rate.

"Capital Expenditures" means all payments due or accruing due (whether or not paid) during a Fiscal Year in respect of the cost (including expenditures on materials, contract labour and direct labour, but excluding expenditures properly chargeable to repairs and maintenance in accordance with GAAP, amounts allowed on trade-ins, expenditures funded from insurance proceeds, capital lease payments and the costs of any Acquisition) of any fixed asset or improvement, or replacement, substitution, or addition thereto, which have a useful life of more than one (1) year, including, without limitation, those arising in connection with the direct or indirect acquisition of such assets by way of increased product or service charges or offset items or those incurred on inception of Capital Leases.

"Capital Lease" means any lease of Property that, in accordance with GAAP, is required to be capitalized on the consolidated balance sheet of the Credit Parties.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Management Obligations" means obligations of any Credit Party to the Agent or a Lender (or any of their Affiliates) in respect of any Cash Management Services.

"Cash Management Provider" means any Lender in its capacity as a provider of Cash Management Services. For the avoidance of doubt, a Person that ceases to be a Lender shall cease to be a Cash Management Provider.

"Cash Management Reserves" means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to Cash Management Services then provided or outstanding.

"Cash Management Services" means any one or more of the following types of services or facilities provided to any Credit Party by a Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit card processing services, and (d) credit or debit cards.

"CDOR Rate" means, on any day and for any period, an annual rate of interest equal to the average rate applicable to Canadian Dollar bankers' acceptances for the applicable period appearing on the "Reuters Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. 2000 definitions, as modified and amended from time to time), rounded to the nearest 1/100th of 1% (with .005% being rounded up), at approximately 10:00 a.m., Toronto time, on such day, or if such day is not a Business Day, then on the immediately preceding Business Day, provided that if such rate does not appear on the Reuters Screen CDOR Page on such day as contemplated, then the CDOR Rate on such day shall be calculated as the rate for such period

applicable to Canadian Dollar bankers' acceptances quoted by CIBC as of 10:00 a.m., Toronto time, on such day or, if such day is not a Business Day, then on the immediately preceding Business Day.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders, of Equity Securities representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of Grafton-Fraser; (b) with respect to any Credit Party that is, at any time, a wholly-owned direct or indirect Subsidiary of Grafton-Fraser, when any such Credit Party ceases to be a wholly-owned direct or indirect Subsidiary of Grafton-Fraser; (c) the occupation of a majority of the seats (other than vacant seats) on the board of directors of Grafton-Fraser by Persons who were neither (i) nominated by the board of directors of Grafton-Fraser nor (ii) appointed by Permitted Holders; or (d) the acquisition of direct or indirect Control of Grafton-Fraser by any Person or group of Persons acting jointly or otherwise in concert, other than the Permitted Holders.

"Change in Law" means (i) the adoption of any new Applicable Law after the date of this Agreement, (ii) any change in any existing Applicable Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of such Lender or Issuing Bank or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law, but in the case of a request, guideline or directive not having the force of law, being a request, guideline or directive with which persons customarily comply) of any Governmental Authority made or issued after the date of this Agreement.

"CIBC" means Canadian Imperial Bank of Commerce and its successors.

"Collateral" means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security Document.

"Collateral Management Fee" has the meaning set out in Section 2.10(c).

"Commitment" means, with respect to each Lender, the commitment(s) of such Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Sections 2.6 and/or 2.9, and as such commitments may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.4. The initial amount(s) of each Lender's Commitment(s) are set forth on Schedule A, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment(s), as applicable. The initial aggregate amount of the Commitments is \$35,000,000.

"Consolidated Net Income" means, for any period, the net income on a consolidated basis of Grafton-Fraser and its consolidated Subsidiaries; provided, however, that Consolidated Net Income shall not include or take into account:

- (i) any net income (or loss) of any Subsidiary that is not a Credit Party, except that (subject to the exclusions contained in clauses (iii) and (iv) below), Grafton-Fraser's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to Grafton-Fraser or a Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Subsidiary, to the limitations contained in clause (ii) below);

- (ii) any net income of any Subsidiary which is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to Grafton-Fraser, except that (A) subject to the exclusion contained in clauses (iii) and (iv) below, Grafton-Fraser's equity in the net income of any such Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Subsidiary consistent with such restriction during such period to Grafton-Fraser or another Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Subsidiary, to the limitation contained in this clause), and (B) Grafton-Fraser's equity in a net loss of any such Subsidiary for such period shall be included in determining such Consolidated Net Income;
- (iii) any gain (or loss) realized upon the sale or other disposition of any assets of Grafton-Fraser or any Subsidiary (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any capital stock of any Person;
- (iv) extraordinary or nonrecurring gains;
- (v) extraordinary or nonrecurring losses excluded with the prior written consent of the Agent; and
- (vi) the effect of a change in GAAP.

"Contract Period" means the term of any BA Borrowing selected by the Borrower in accordance with Section 2.3(a)(iv) commencing on the date of such BA Borrowing and expiring on a Business Day which shall be either one month, two months, or three months thereafter (or such other terms as may be requested by the Borrower and approved unanimously by the Lenders); provided that (i) subject to subparagraph (ii) below, each such period shall be subject to such extensions or reductions as may be determined by the Agent to ensure that each Contract Period will expire on a Business Day, and (ii) no Contract Period shall extend beyond the Maturity Date.

"Control" means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

"Cover" means, at any time, an amount equal to the amount of Bankers Acceptances plus 105% of the aggregate amount of Letter of Credit Exposure and F/X Exposure at such time and required to be paid by the Borrower to the Agent in accordance with Section 2.9 and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to the Agent as security until such time as the applicable Bankers Acceptances, Letters of Credit or F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent shall apply any or all amounts in such collateral account in satisfaction of such Reimbursement Obligations.

"Credit" means the \$35,000,000 (subject to increase or decrease as provided hereunder) revolving credit facility established pursuant to the Commitments of the Lenders.

"Credit Card and Debit Card Account Receivable" means an Account owed by a major credit card or debit card payment processor or a major issuer of credit cards to the Borrower resulting from charges by a customer of the Borrower on credit cards or debit cards issued by such processor or issuer in connection with the sale of goods by the Borrower, in each case in the ordinary course of its business.

"Credit Party" means a Borrower or a Guarantor, as the context requires.

"Default" means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both, would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means any Lender (as reasonably determined by the Agent) that (a) has failed to fund any portion of the Loans, participations in Letters of Credit required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, or has notified the Agent that it intends not to fund any of the foregoing, (b) has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (c) has failed, within three (3) Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its Commitments, provided that such Lender shall cease to be a Defaulting Lender under this clause (c) upon the Agent's receipt of such confirmation, (d) has defaulted under its funding obligations under any other lending commitment with any other Person (other than as a result of a good faith dispute thereunder), or (e) has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy or insolvency proceeding, and such proceeding is not dismissed or stayed within 30 days after the commencement thereof.

"Defined Benefit Plan" has the meaning set out in Section 3.11.

"Deteriorating Lender" means any Defaulting Lender or any Lender as to which (a) the Issuing Bank has a good faith belief that such Lender or its Subsidiary has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) such Lender or a Person that controls such Lender has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy, insolvency or similar proceeding; provided that a Lender shall not be a Deteriorating Lender solely by virtue of the ownership or acquisition by a Governmental Authority of any Equity Securities in such Lender or the Person controlling such Lender.

"Discount Proceeds" means, for any Bankers Acceptance (or, as applicable, any BA Equivalent Loan), an amount (rounded to the nearest whole cent, and with one-half of one cent being rounded up) calculated on the applicable date of Borrowing by multiplying:

- (i) the face amount of the Bankers Acceptance (or, as applicable, the undiscounted amount of the BA Equivalent Loan); by
- (ii) the quotient of one divided by the sum of one plus the product of:
 - (A) the Discount Rate (expressed as a decimal) applicable to such Bankers Acceptance (or as applicable, such BA Equivalent Loan), multiplied by
 - (B) a fraction, the numerator of which is the Contract Period of the Bankers Acceptance (or, as applicable, the BA Equivalent Loan) and the denominator of which is 365 or 366, as applicable,

with such quotient being rounded up or down to the nearest fifth decimal place, and with .000005 being rounded up.

"Discount Rate" means, with respect to either a Bankers Acceptance for a particular Contract Period being purchased by a Lender on any day or a BA Equivalent Loan being made by a Lender on any day, (i) for any Lender which is a Schedule I chartered bank under the *Bank Act* (Canada), the CDOR Rate on such day for such Contract Period; and (ii) for any other Lender, the lesser of

- (a) the CDOR Rate on such day for such Contract Period, plus 0.10%, and
- (b) the percentage discount rate quoted by such Lender as the percentage discount rate at which such Lender would, in accordance with its normal practices, at or about 10:00 a.m. on such date, be prepared to purchase bankers' acceptances or make BA Equivalent Loans having a face amount and term comparable to the face amount and term of such Bankers Acceptance or a BA Equivalent Loan, as applicable.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.19.

"Early Termination Fee" means the fee due and payable by the Borrower to the Agent on behalf of the Lenders in the event of termination of this Agreement or reduction of the Commitment on a date prior to the Maturity Date as determined by multiplying (a) the aggregate amount of the Commitments at such time, in the case of termination of this Agreement or the Commitment; or (b) the amount by which the Commitment is reduced, in the case of the reduction of the Commitment, by (i) 0.50% if the Commitment is cancelled or reduced at any time on or prior to the first anniversary of the Effective Date, and (ii) 0.00% if the Commitment is cancelled or reduced at any time following the first anniversary of the Effective Date.

"EBITDA" means, with reference to any particular period, Consolidated Net Income of Grafton-Fraser for such period plus, without duplication, all amounts deducted in arriving at such Consolidated Net Income amount in respect of (i) Interest Expense for such period, plus (ii) consolidated income taxes of Grafton-Fraser and its Subsidiaries for such period, plus (iii) all amounts properly charged for depreciation of fixed assets and amortization of intangible assets during such period on the books of Grafton-Fraser and its Subsidiaries, plus (iv) amortization of tenant allowances of Grafton-Fraser and its Subsidiaries, plus (v) accrued and unpaid dividends on Class C-1 Preferred Shares and Class C-2 Preferred Shares of Grafton-Fraser, plus (vi) all fees, costs and expenses (including legal and other professional fees) in an amount not in excess of \$250,000 paid during such period in respect of the establishment of the Revolving Loan and the settlement, execution, delivery and entering into of the Loan Documents and other documents delivered pursuant thereto on the Closing Date, plus or minus (as applicable) any adjustments for (vii) non cash gains or losses, and (viii) extraordinary/unusual non-recurring items (such items in (viii) to be agreed upon by the Lender in its discretion) for the particular period.

"Effective Date" means the date on which all of the conditions specified in Section 4.1 are satisfied or waived in accordance with Section 9.2, as confirmed by the making of the first Loans under this Agreement.

"Eligible Credit Card and Debit Card Account Receivable" means, at the time of any determination, each Credit Card and Debit Card Account Receivable which, at the time of its creation and at the time of such determination: (i) has been originated in the ordinary course of business of the Borrower and has been earned and represents the bona fide amounts due to the Borrower from a credit or debit card payment processor and/or credit card issuer, and (ii) is not

ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (1) through (11), inclusive, below. Without limiting the foregoing, to qualify as an Eligible Credit Card and Debit Card Account Receivable, a Credit Card and Debit Card Account Receivable shall indicate no person other than the Borrower as payee or remittance party. In determining the amount to be so included as an Eligible Credit Card and Debit Card Account Receivable for the purposes of the Borrowing Base, the face amount of an Eligible Credit Card and Debit Card Account Receivable shall be reduced by, without duplication and to the extent not reflected in such face amount, the aggregate amount of: (x) all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, credit or debit card processor fees or other allowances (including any amount that the Borrower may be obligated to rebate to a customer, a credit or debit card payment processor, or credit card issuer pursuant to the terms of any agreement or understanding (written or oral)), and (y) all cash received in respect of such Credit Card and Debit Card Account Receivable but not yet applied by the Borrower to reduce the amount of such Eligible Credit Card and Debit Card Account Receivable. Unless otherwise approved from time to time in writing by the Agent, no Credit Card and Debit Card Account Receivable shall be an Eligible Credit Card and Debit Card Account Receivable if, without duplication:

(1) such Credit Card and Debit Card Account Receivable is not owned by the Borrower and the Borrower does not have good or marketable title to such Credit Card and Debit Card Account Receivable;

(2) such Credit Card and Debit Card Account Receivable does not constitute an Account or such Credit Card and Debit Card Account Receivable has been outstanding for more than five (5) Business Days from the date of sale;

(3) the issuer or payment processor of the applicable credit or debit card with respect to such Credit Card and Debit Card Account Receivable is not located in Canada or the United States, or is the subject of any bankruptcy or insolvency proceedings, or has otherwise suspended its business or made an assignment for the benefit of its creditors;

(4) such Credit Card and Debit Card Account Receivable is not a valid and enforceable obligation of the applicable issuer with respect thereto;

(5) such Credit Card and Debit Card Account Receivable is subject to any Lien whatsoever other than Liens in favor of the Agent or any other Permitted Lien;

(6) such Credit Card and Debit Card Account Receivable is not subject to a valid and perfected Lien in favor of the Agent, for the benefit of the Lenders, senior in priority to all other Liens other than Permitted Liens which have priority over the Liens of the Agent by operation of applicable law;

(7) such Credit Card and Debit Card Account Receivable does not conform to all representations, warranties, covenants or other provisions relating to Credit Card and Debit Card Accounts Receivable in this Agreement or in any of the other Loan Documents;

(8) such Credit Card and Debit Card Account Receivable is subject to risk of set-off, non-collection or not being processed due to unpaid and/or accrued credit card processor fee balances, limited to the lesser of the balance of such Credit Card and Debit Card Account Receivable or unpaid credit or debit card processor fees;

(9) such Credit Card and Debit Card Account Receivable does not meet such other reasonable eligibility criteria for Credit Card and Debit Card Accounts Receivable as the Agent may determine from time to time in its Permitted Discretion; or

(10) such Credit Card and Debit Card Account Receivable did not arise from merchandise sold or services rendered by the applicable Borrower in the ordinary course of its business.

(11) such Credit Card and Debit Card Account Receivable is not denominated in Canadian Dollars or U.S. Dollars.

"Eligible In-Transit Inventory" means all raw materials and finished goods Inventory owned by the Borrower and not covered by Letters of Credit, and which Inventory is in transit to a Borrower's facilities or a storage facility of another Person which Inventory (a) is owned by the Borrower and such Borrower holds a bill of lading with respect thereto, (b) which has been shipped to a location in Canada where the Agent's Liens have been perfected for receipt by the Borrower or on behalf of such Borrower within 60 days of the date of determination, but which has not yet been delivered to the Borrower, (c) is fully insured, (d) is subject to a first priority security interest (excluding Liens in respect of paragraphs (d), (f), (g) and (j) of the definition of Permitted Liens) in and Lien upon such goods in favour of Agent at the point of destination, and is subject to no other Liens except for any possessory lien upon such goods in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such goods to the applicable Borrower, (e) is evidenced or deliverable pursuant to a document of title, designating the Borrower as consignee and in each case as to which a customs broker agreement or other similar agreement, reasonably satisfactory to the Agent, is in effect and the documents of title have been delivered to such customs broker, and (f) is otherwise deemed to be "Eligible Inventory" hereunder.

"Eligible Inventory" means, at any time with respect to the Borrower, all Inventory of such Borrower valued in Canadian Dollars on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur on at least a monthly basis; provided that, in any event, no Inventory shall be deemed Eligible Inventory unless each of the following statements is accurate and complete (and by including such Inventory in any computation of the applicable Borrowing Base, the Borrower shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Agent):

(1) Such Inventory is in good condition, merchantable, meets all standards imposed by any Governmental Authority having regulatory authority over it or its use and/or sale and is not obsolete or work-in-process Inventory and is either currently usable or currently saleable in the normal course of business of the Borrower;

(2) Such Inventory is

(a) in the possession of the Borrower and located on real property owned or leased by the Borrower within Canada or the United States of America (provided that if such Inventory is located on real property leased by the Borrower, the landlord of such real property shall have executed and delivered to the Agent a landlord waiver (in form acceptable to the Agent), or the Agent shall have been advised that such Inventory is located on leased property and been given the opportunity to establish Availability Reserves in respect thereof), or

(b) in the possession of a bailee within Canada and such bailee shall have executed and delivered to the Agent, a bailee letter (in form acceptable to the Agent), or the Agent shall have been advised that such Inventory is in the possession of a bailee and been given the opportunity to establish Availability Reserves in respect thereof, or

(c) Eligible In-Transit Inventory;

(3) Each of the representations and warranties set forth in the Loan Documents with respect to such inventory is true and correct on such date;

(4) The Agent on behalf of the Lenders, has a first-priority perfected Lien (excluding Liens in respect of paragraphs (d), (f), (g) and (j) of the definition of Permitted Liens) covering such Inventory, and such Inventory is, and at all times will be, free and clear of all Liens, other than such Permitted Liens;

(5) Such Inventory does not include goods (i) that are not owned by the Borrower, (ii) that are held by the Borrower pursuant to a consignment agreement, or (iii) that the Borrower has delivered to customers on consignment terms, or (iv) that are special order goods (unless such specialty goods have been sold in the ordinary course of business prior to the date upon which such special ordered goods were ordered) or discontinued goods;

(6) Such inventory does not include goods that are subject to licensing agreements which restrict the sale of such goods and for which the Agent, in its Permitted Discretion, has requested a licensor waiver executed by the licensor (in a form satisfactory to the Agent in its Permitted Discretion) that has not been delivered to the Agent;

(7) Such Inventory is not subject to repossession under the BIA except to the extent the applicable vendor has entered into an agreement with the Agent, in form and substance reasonably satisfactory to the Agent, waiving its right to repossession;

(8) Such Inventory does not consist of store room materials, supplies, parts, samples, prototypes, or packing and shipping materials;

(9) Such Inventory does not consist of goods that are discontinued, obsolete, expired, slow-moving or returned, rejected or repossessed or used goods taken in trade;

(10) Such Inventory is not evidenced by negotiable documents of title unless delivered to the Agent with endorsements and insurance, as applicable, on all terms and conditions satisfactory to the Agent acting reasonably;

(11) Such Inventory does not constitute Hazardous Materials;

(12) Such Inventory is covered by property insurance in accordance with Section 5.9, subject to applicable deductibles;

(13) **[Intentionally deleted];**

(14) Such Inventory is not Inventory which the Agent has *determined in the exercise of its Permitted Discretion* that the Agent may not sell or otherwise dispose of in accordance with the terms of the applicable Security Documents without infringing upon the rights of another Person or violating any contract with any other Person;

(15) Such Inventory is not covered by a negotiable document of title (unless it otherwise constitutes Eligible In-Transit Inventory), unless such document has *been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favour of Agent on behalf of the Lenders and Permitted Liens*;

(16) Such Inventory is not Inventory which the Agent, in the exercise of its Permitted Discretion, does not meet such other reasonable eligibility criteria for Inventory as the Agent may determine from time to time in its Permitted Discretion.

"Environmental Laws" means all Applicable Laws relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, release, threatened release or disposal of any Hazardous Material, or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Credit Party directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Securities" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"ETA" means Part IX of the *Excise Tax Act* (Canada) as amended from time to time (or any successor statute).

"Event of Default" has the meaning set out in Section 7.1.

"Excess Availability" means, as of any date, the remainder of (a) the Borrowing Base as of such date, less (b) the aggregate Exposure as of such date. Excess Availability shall always be determined on the basis that all debts and obligations shall be current, and all accounts payable shall be handled in the normal course of the Borrower's business consistent with its past practices.

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient (in this definition, (a "recipient") of any payment to be made by or on account of any obligation of the Borrower hereunder, income or franchise Taxes imposed on (or measured by) such recipient's taxable income or capital Taxes imposed on (or measured by) such recipient's taxable capital, in each case by Canada, or by the jurisdiction under the Applicable Laws of which such recipient is organized, in which its principal or head office or the office from which it is acting for the purposes of this Agreement is located or in which it is resident or carrying on business.

"Existing Senior Credit Facility" means the credit agreement dated as of December 11, 2014, entered into between Grafton-Fraser, as borrower, and Bank of Montreal, as lender, as amended before the Closing Date.

"Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and, without duplication, its Letter of Credit Exposure, F/X Exposure at such time.

"Federal Funds Effective Rate" means, for any day, the per annum rate equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System of the United States of America arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Board of New York, or, if such rate is not so published for any day which is a

Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of recognized standing selected by it.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

"Fiscal Month" means any fiscal month of the Borrower.

"Fiscal Year" means any fiscal year of the Borrower.

"Fixed Charge Coverage Ratio" means, as of the last day of any Fiscal Month, the ratio of (a) without duplication, the sum of (i) EBITDA for the Rolling Period ended on that date minus (ii) non-financed Capital Expenditures made by the Credit Parties on a consolidated basis during such Rolling Period and minus (iii) income taxes paid in cash or cash equivalents by the Credit Parties on a consolidated basis during such Rolling Period to (b) the sum of (i) Interest Expense for such Rolling Period plus (ii) the aggregate of all dividends, distributions and principal payments (other than principal payments under a revolving line of credit) on Funded Indebtedness made by the Credit Parties on a consolidated basis during such Rolling Period plus (iii) repayments of Capital Lease Obligations made by the Credit Parties on a consolidated basis during such Rolling Period.

"Funded Indebtedness" of any Person means Indebtedness of such Person other than customer deposits, trade payables, utilities, prepaid goods and services and taxes not yet due and delinquent, the whole incurred in the ordinary course of business of the Credit Parties.

"FSCO" means the Financial Services Commission of Ontario and any Person succeeding to the functions thereof and includes the Superintendent under such statute and any other Governmental Authority empowered or created by the *Supplemental Pensions Act* (Québec) or the *Pension Benefits Act* (Ontario) or any Governmental Authority of any other Canadian jurisdiction exercising similar functions in respect of any Pension Plan of the Credit Parties or any of their Subsidiaries and any Governmental Authority succeeding to the functions thereof.

"F/X Bank" means Canadian Imperial Bank of Commerce.

"F/X Contract" means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between the Borrower and the F/X Bank in accordance with Section 2.19.

"F/X Contract Sub-Line" means the amount of the commitment by the Lenders hereunder, in an aggregate amount of up to but not exceeding US\$2,500,000 (or the Canadian\$ Equivalent thereof) to assist the Borrower in obtaining F/X Contracts from the F/X Bank pursuant to Section 2.19.

"F/X Exposure" means, at any time, and subject to the F/X Contract Sub-Line, the sum of: (a) the amount determined by the Agent (in its Permitted Discretion with consideration given to any determinations provided to the Agent by the F/X Bank) to be the credit risk associated with all outstanding F/X Contracts, plus (b) the aggregate amount of all Reimbursement Obligations in respect of all F/X Contracts at such time. The F/X Exposure of all Lenders shall not exceed the F/X Contract Sub-Line. Any F/X Exposure denominated in any currency other than Canadian Dollars shall be the Cdn.\$ Equivalent thereof.

"F/X Transaction" means any currency exchange transaction or agreement or any option with respect to any such transaction or agreement entered into between the Borrower and any other counterparty.

"GAAP" means at any particular time with respect to any Credit Party, generally accepted accounting principles for small private enterprises (ASPE) as in effect at such time in Canada or (as the case may be) International Financial Reporting Standards as applied in Canada, in either case, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, "GAAP" shall refer to the principle which is then employed by the applicable Credit Party with the concurrence of its independent chartered professional accountants, who are acceptable to the Agent provided further that, for the purposes of determining compliance with the financial covenants herein, "GAAP" means GAAP as at the date hereof.

"Governmental Authority" means the Government of Canada, any other nation or any political subdivision thereof, whether provincial, state, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions, and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government, including the Bank Committee on Banking Regulation and Supervisory Practices of the Bank of International Settlements.

"Grafton-Fraser" means Grafton-Fraser Inc., existing as an Ontario corporation as at the date hereof.

"GST" means the goods and services tax and all other amounts payable under the ETA or any similar legislation in any other jurisdiction of Canada, including QST and HST.

"Guarantee" of or by any Person (in this definition, the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the "primary credit party") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

"Guarantor" means each Person which has executed and delivered to the Agent, for the benefit of the Lenders, a Guarantee guaranteeing the Obligations of each Borrower, other than its own Obligations.

"Hazardous Materials" means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent or material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Laws, including, asbestos or asbestos-containing materials, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, polychlorinated biphenyls, radon gas, infectious or

medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

"HST" means all amounts payable as harmonised sales tax in the Provinces of Ontario, Nova Scotia, Newfoundland and New Brunswick under the ETA.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid (excluding obligations for tax and utility bills), (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) the net amount of obligations of such Person (determined on a mark-to-market basis) on account of foreign exchange transactions or interest rate swap transactions, and (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general or limited partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means all Taxes other than Excluded Taxes.

"Indemnitor" has the meaning set out in Section 9.3(b).

"Information Certificate" means a certificate executed by each Credit Party containing disclosure relating to each Credit Party in form and substance satisfactory to the Agent.

"Interest Expense" shall mean, for any period, the total interest expense of Grafton-Fraser and its Subsidiaries on a consolidated basis, plus, to the extent not included in such total interest expense, and to the extent incurred by Grafton-Fraser or any of its Subsidiaries, (i) interest expense attributable to Capital Lease Obligations of Grafton-Fraser or any of its Subsidiaries, (ii) amortization of debt discount or financing fees, (iii) capitalized interest, (iv) non-cash interest expense, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, (vi) net costs associated with Swap Agreements (including amortization of fees), (vii) standby fees, (viii) preferred stock dividends in respect of all preferred stock issued by Grafton-Fraser or a Subsidiary and held by Persons other than Grafton-Fraser or a Subsidiary, and (ix) interest actually paid by Grafton-Fraser or any Subsidiary on any Indebtedness of any other Person.

"Intercreditor Agreement" means the intercreditor agreement dated as of the date hereof by and between CIBC, as agent and the Term Administrative Agent.

"Interest Payment Date" means, (a) in the case of any Loan other than LIBO Rate Borrowing, the first Business Day of each month, and (b) in the case of a LIBO Rate Borrowing, the last day of each Interest Period relating to such LIBO Rate Borrowing, provided that if an Interest Period for any LIBO Rate Borrowing is of a duration exceeding 90 days, then "Interest Payment Date" shall also include each date which occurs at each 90-day interval during such Interest Period.

"Interest Period" means, with respect to a LIBO Rate Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is 30, 60 or 90 days thereafter, as the Borrower may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond any date that any principal payment or prepayment is scheduled to be due unless the aggregate principal amount of (A) Canadian Prime Borrowings and Base Rate Borrowings and (B) BA Borrowings and LIBO Rate Borrowings which have Interest Periods or Contract Periods which will expire on or before such date, less the aggregate amount of any other principal payments or prepayments due during such Interest Period, is equal to or in excess of the amount of such principal payment or prepayment, and (iv) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a converted or continued Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Inventory" means, in respect of each Credit Party, all of such Credit Party's present and hereafter acquired inventory (as defined in the PPSA) and including all raw materials, merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work in process to finished goods, and all "stores" inventory or "operating and maintenance supplies" inventory, and all proceeds of any thereof (of whatever sort).

"Investment" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect loan, advance (other than advances to employees for moving, entertainment or travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and Accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than the Borrower or any Credit Party in connection with such disposition), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital).

"Issuing Bank" means Canadian Imperial Bank of Commerce, in its capacity as the bank issuing a Letter of Credit for the Borrower in accordance with Section 2.18.

"**ITA**" means the *Income Tax Act* (Canada) as amended from time to time (or any successor statute).

"**Jones New York Canada**" means 2473304 Ontario Inc., an Ontario corporation as at the date hereof.

"**Jones New York Canada Asset Purchase Agreement**" means the asset purchase agreement dated as of July 24, 2015 by and between Jones New York Canada, as buyer, Jones Apparel (Canada) Ltd., as seller, and Kasper Group LLC, as guarantor.

"**Jones New York Canada Assets**" means the assets acquired by Jones New York Canada pursuant to the Jones New York Canada Asset Purchase Agreement.

"**L/C Inventory**" means Inventory that is subject to a documentary import letter of credit, in form and content satisfactory to the Agent, which such letter of credit has been issued on behalf of any Credit Party but has not yet been accepted.

"**Lender**" means any Lender having a Commitment hereunder and/or a Revolving Loan outstanding hereunder.

"**Lender Affiliate**" means, with respect to any Lender, an Affiliate of such Lender.

"**Lenders**" means the Persons listed as lenders on Schedule A (and includes their respective successors) and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "**Lenders**" includes the Issuing Bank.

"**Letter of Credit**" means a letter of credit issued by the Issuing Bank for or on behalf of the Borrower in accordance with Section 2.18.

"**Letter of Credit Exposure**" means, at any time and subject to the Letter of Credit Sub-Line, the aggregate face amount of all outstanding Letters of Credit at such time. The Letter of Credit Exposure of any Lender at any time shall be its Applicable Percentage of the total Letter of Credit Exposure at such time with the total of all such Letter of Credit Exposure of all Lenders not to exceed the Letter of Credit Sub-Line. Any Letter of Credit Exposure denominated in U.S. Dollars shall be the Cdn.\$ Equivalent thereof.

"**Letter of Credit Sub-Line**" means the amount of the commitment by the Agent and the Lenders hereunder, in an aggregate amount up to but not exceeding \$5,000,000, to assist the Borrower in obtaining Letters of Credit.

"**LIBO Rate**" means, for any Interest Period, the rate for U.S. Dollar borrowings appearing on Page LIBOR01 of the Reuters Service (or on any successor or substitute page of such Service, or any successor to or substitute for such Service providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" for such Interest Period shall be the rate at which U.S. Dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of CIBC in immediately available funds in the London interbank market at

approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"LIBO Rate Borrowing" means a Borrowing comprised of one or more LIBO Rate Loans.

"LIBO Rate Loan" means a Loan denominated in U.S. Dollars made by the Lenders to the Borrower hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the LIBO Rate.

"Lien" means, (a) with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothec, hypothecation, encumbrance, charge, security interest, royalty interest, trust, deemed trust, adverse claim, prior claim, defect of title or right of set off in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to any asset, (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement, and (e) any other arrangement having the effect of providing security.

"Loan" means any loan made by the Lenders to the Borrower pursuant to this Agreement.

"Loan Documents" means this Agreement, the Security Documents, the Intercreditor Agreement, the Blocked Account Agreement, the Borrowing Requests, the Borrowing Base Reports and any other instrument or agreement (other than participation, agency or similar agreements among the Lenders or between any Lender and any other bank or creditor with respect to any indebtedness or obligations of any Credit Party hereunder or thereunder) now or hereafter entered into in connection with this Agreement (including any F/X Contracts), as such instruments or agreements may be amended, modified or supplemented from time to time.

"Material Adverse Change" means any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Credit Parties taken as a whole, or (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Agent and the Lenders thereunder or (c) any Material Contract, or (d) the amount which the Lenders would be likely to receive (after giving effect to delays in payment and costs of enforcement) upon the liquidation of the Collateral.

"Material Contract" means (a) the contracts, licences and agreements listed and described on Schedule 3.18, and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of the Credit Parties taken as a whole, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with *comparable commercial terms*.

"Material Indebtedness" means any Indebtedness (other than the Loans) of any one or more of the Credit Parties in an aggregate principal amount exceeding \$1,000,000.

"Maturity Date" means the fifth anniversary of the Effective Date (or, if such fifth anniversary is not a Business Day, the next Business Day thereafter).

"Obligations" means, with respect to any Credit Party, all obligations, liabilities and Indebtedness of such Credit Party to the Agent or the Lenders with respect to the principal of and

interest on the Loans and the payment or performance of all other obligations, liabilities and indebtedness of such Credit Party to the Agent or the Lenders hereunder or arising under or pursuant to any one or more of the other Loan Documents and other documents delivered pursuant thereto or with respect to the Loans, including (i) all reimbursement and indemnity obligations of such Credit Party to the Agent, or the Lenders hereunder or in connection with any Letter of Credit, F/X Contract or otherwise, (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to such Credit Party hereunder, under the other Loan Documents and other documents delivered pursuant thereto, or under any other agreement or instrument with the Agent, Lenders, F/X Bank or Issuing Bank, and Cash Management Obligations.

"Out-of-Pocket Expenses" means all of the Agent's present and future out-of-pocket reasonable expenses incurred relative to this Agreement or any other Loan Documents and other documents delivered pursuant thereto, whether incurred heretofore or hereafter, which expenses shall include, without being limited to: the reasonable cost of retaining external legal counsel, record searches, all reasonable costs and expenses incurred by the Agent in opening bank accounts, depositing cheques, receiving and transferring funds, and wire transfer charges, any reasonable charges imposed on the Agent due to returned items and "insufficient funds" of deposited cheques and the Agent's standard fees relating thereto, any reasonable amounts paid by, incurred by or charged to, the Agent by the Issuing Bank under a Letter of Credit, by the F/X Bank under an F/X Contract or the reimbursement agreements related thereto, applications for Letters of Credit, F/X Contracts or other like document which pertain either directly or indirectly to such Letters of Credit or F/X Contracts and the Agent's standard fees relating to the Letters of Credit, F/X Contracts and any drafts thereunder, reasonable travel, lodging and similar expenses of the Agent's personnel (or any of its agents) in connection with inspecting and monitoring the Collateral from time to time at reasonable intervals hereunder, any applicable reasonable counsel fees and disbursements, fees and taxes relative to the filing of financing statements, and all reasonable expenses, costs and fees set forth incurred by or imposed on the Agent by reason of the exercise of any of its rights and remedies under this Agreement or any of the other Loan Documents and other documents delivered pursuant thereto.

"Participant" has the meaning set out in Section 9.4.

"Payment Conditions" means, at the time of determination with respect to any transaction or payment specified in this Agreement as being subject to Payment Conditions: (i) Excess Availability would be at least ten percent (10%) of the Borrowing Base on a *pro forma* basis after giving effect to the applicable transaction or payment, on an average daily basis for the sixty (60) day immediately prior to the applicable transaction or payment, and immediately after the applicable transaction or payment, (ii) the *pro forma* Fixed Charge Coverage Ratio for the most recently completed Rolling Period after giving effect to any such payment or transaction shall be equal to or greater than 1.00:1.00, and (iii) no Default or Event of Default shall have occurred and be continuing on the date of any such payment or will occur immediately after giving effect thereto.

"Payment Office" means the Agent's office located at 199 Bay Street, 4th Floor, Toronto, Ontario, M5L 1A2, Attention: Senior Director, Portfolio Management, Asset Based Lending Group (or such other office or individual as the Agent may hereafter designate in writing to the other parties hereto).

"Pension Plan" means any pension plan (including any plan subject to the *Quebec Pension Plan Act* (Quebec) including, without limitation, the *Supplemental Pension Plans Act* (Quebec) or the *Pension Benefits Act* (Ontario), as amended from time to time (or any successor statute) in respect

of which (i) is maintained by any Credit Party, (ii) any Credit Party makes, has made or is required to make (at any time during the five (5) calendar years preceding the date of this Agreement) contributions in respect of its employees, or (iii) any other pension plan with respect to which any Credit Party has incurred or may incur liability, including contingent liability either to such plan or to any Person, administration or Governmental Authority, but excludes any government sponsored pension plan such as the Canada Pension Plan and the Quebec Pension Plan.

"Permitted Acquisition" means any Acquisition by a Credit Party (i) which is of a Person carrying on a business with primary operations in Canada or the United States which is the same as or related to the business carried on by any Credit Party (or if an asset Acquisition, is of assets used or useful in a business which is the same as or related to the business carried on by any Credit Party) and such business shall have an EBITDA that is accretive to the Borrower; (ii) in respect of which the *Eligible Inventory and Eligible Credit Card and Debit Card Account Receivable* acquired in such Acquisition will be included in the Borrowing Base; (iii) except as otherwise provided in Section 5.11, in respect of which the Lenders will have a Lien over the assets to be acquired, subject only to Permitted Liens (and if such Acquisition is an Acquisition of Equity Securities of any Person, also a full recourse guarantee from, and a first-priority Lien (subject only to Permitted Liens) over the assets of, such Person; (iv) which, if such Acquisition is an Acquisition of Equity Securities of any Person, such acquiring Person acquires not less than 100% of the Equity Securities of such Person; (v) which is not hostile and shall have been approved by the board of directors (or other similar body) and/or the shareholders or other equityholders of the target; and (vi) the aggregate consideration of which, when taken together with all other Acquisitions by the Credit Parties since the Effective Date, shall not exceed \$3,000,000 in the aggregate. Notwithstanding the foregoing, no Accounts or Inventory acquired by a Credit Party in a Permitted Acquisition shall be included as *Eligible Credit Card and Debit Card Account Receivable, Eligible Inventory* until a field examination (and, if required by the Agent, an Inventory, Equipment or real property appraisal) with respect thereto has been completed to the satisfaction of the Agent, including the establishment of Availability Reserves required by the Agent in its Permitted Discretion; provided that field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought.

"Permitted Discretion" means a determination made in good faith by the Agent and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Holders" means (a) 1903 Equity Fund, LP and Stonehouse Group Inc. (in this definition, the **"Primary Permitted Holders"**); (b) each principal shareholder and Primary Permitted Holder; (c) the spouse of any principal shareholder of any Primary Permitted Holder (including a widow or widower); (d) any lineal descendent of any principal shareholder of any Primary Permitted Holder (treating for this purpose, any legally adopted descendant as a lineal descendant); (e) the estate trustee of any Person listed in clauses (b) to (d); (f) any trust (whether testamentary or *inter vivos*) primarily for the lineal descendants of any principal shareholder of any Primary Permitted Holder, spouses of such lineal descendants, any principal shareholder of the Primary Permitted Holders themselves or their spouse; and (g) any and all corporations which are directly or indirectly Controlled by any one or more of the foregoing.

"Permitted Indebtedness" means Indebtedness permitted under Section 6.1.

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are *unconditionally guaranteed by, the Government of Canada or of any Canadian province* (or by any agency thereof to the extent such obligations are backed by the

full faith and credit of the Government of Canada or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;

- (b) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any Schedule I bank under the *Bank Act* (Canada); and
- (c) deposits in bank accounts made in the ordinary course of business and otherwise permitted hereunder.

"Permitted Liens" means:

- (a) Liens in favour of the Lenders for the obligations of the Borrower or any other Credit Party under or pursuant to the Loan Documents;
- (b) Liens granted by a Credit Party in favour of another Credit Party in order to secure any of its indebtedness to such other Credit Party, provided that such Liens are subject to assignment, subordination and postponement arrangements satisfactory to the Agent;
- (c) Purchase Money Liens and Liens to secure Capital Lease Obligations, in each case only to the extent permitted by Section 6.1(e);
- (d) Liens imposed by any statute or in favour of any Governmental Authority for Taxes or Priority Payables not yet due and delinquent or which are being contested in good faith in compliance with Section 5.3, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against of the assets of any Credit Party;
- (e) carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Liens arising by operation of Applicable Law, arising in the ordinary course of business, which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party, provided in each case that the applicable Credit Party shall have set aside on its books reserves deemed adequate therefor to the extent required in accordance with GAAP and not resulting in qualification by auditors;
- (f) statutory Liens incurred or pledges or deposits made under worker's compensation, unemployment insurance and other social security legislation;
- (g) Liens or deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (other than for borrowed money) incurred in the ordinary course of business;
- (h) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by Applicable Law or incurred in the ordinary course of business and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections or minor encroachments in title thereto which, in the aggregate, are not material, and which do

not in any case impair the ordinary conduct of the business of the Credit Parties taken as a whole;

- (i) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Credit Parties shall at any time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;
- (j) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been duly given in accordance with Applicable Law or which although filed or registered, relate to obligations not due and delinquent or which are being contested in good faith in compliance with Section 5.3;
- (k) the rights reserved to or vested in Governmental Authorities by statutory provisions or rights reserved by the terms of leases, licenses, franchises, grants or permits, which affect any land, to terminate the leases, licenses, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof;
- (l) securities to public utilities or to any municipalities or Governmental Authorities or other public authorities when required by such utilities, municipalities or Governmental Authorities or such other public authorities in connection with the supply of services or utilities to a Credit Party;
- (m) Liens or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that, in the case of a Credit Party such Liens or covenants do not impair the ordinary conduct of the business of the Credit Parties taken as a whole;
- (n) Liens consisting of royalties payable with respect to any asset or property of a Credit Party existing as of the Effective Date; provided that the existence of any such Lien on any material property or asset of a Credit Party shall have been disclosed in writing to the Lenders prior to the Effective Date;
- (o) statutory Liens incurred or pledges or deposits made in favour of a Governmental Authority to secure the performance of obligations of a Credit Party under Environmental Laws to which any assets of such Credit Party are subject;
- (p) any Lien on any property or asset of a Credit Party existing on the date hereof and set forth in Schedule 3.9 or Schedule 3.10; provided that (i) such Lien shall not apply to any other property or asset of such Credit Party, and (ii) such Lien shall secure only those obligations which it secures on the date hereof and any Refinancing thereof;
- (q) any Lien existing on any property or asset prior to the acquisition thereof by a Credit Party or existing on any property or asset of any Person that becomes a Credit Party after the date hereof prior to the time such Person becomes a Credit Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Credit Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of such Credit Party, and

- (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Credit Party, as the case may be and any Refinancing thereof;
- (r) any extension, renewal or replacement of any of the foregoing; provided, however, that the Liens permitted hereunder shall not be extended to cover any additional Indebtedness of the Credit Parties or their property (other than a substitution of like property), except Liens in respect of Capital Lease Obligations and Purchase Money Liens as permitted by (c) above;
- (s) Liens under applicable Pension Plan legislation that relate to contributions not yet due and delinquent;
- (t) Liens granted to the Term Administrative Agent that are subject to the Intercreditor Agreement in connection with the Permitted Term Debt;
- (u) any security interest or set-off arrangements entered into by Grafton-Fraser or any of its Subsidiaries in the ordinary course of its banking arrangements which arise from the general banking conditions; and
- (v) Liens that are contractual rights of set off, off-set or recourse to account balances (i) relating to debit card or other payment services or (ii) related to purchase orders and other agreements (other than Indebtedness for borrowed money) entered into with customers in the ordinary course of business.

"Permitted Term Debt" means the indebtedness owing to the Term Administrative Agent under the Term Loan Agreement in an aggregate amount not to exceed \$50,000,000.

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

"PPSA" means the *Personal Property Security Act* (Ontario), as amended from time to time (or any successor statute) or similar legislation of any other jurisdiction, including, without limitation, the *Civil Code of Quebec*, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests.

"Priority Payables" means, with respect to any Person, any amount payable by such Person which is secured by a Lien which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security Documents in respect of any Eligible Credit Card and Debit Card Account Receivable or Eligible Inventory, including an amount as the Agent reasonably determines reflecting the amounts that may become due under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of the Borrower employed in Canada which would give rise to a Lien with priority under Applicable Law over the Liens of the Agent, amounts owing for wages, vacation pay, severance pay, employee deductions, sales tax, excise tax, Tax payable pursuant to the ETA (net of GST input credits), income tax, non-resident withholding tax, workers compensation, government royalties, pension fund obligations, Canada Pension Plan and other Pension Plan obligations, real property or municipal tax and other statutory or other claims that have or may have priority over, or rank *pari passu* with, such Liens created by the Security Documents.

"Property" means any interest in any kind of property or asset, whether real (including chattels real), personal or mixed, movable or immovable, tangible or intangible.

"Protective Advances" has the meaning set out in Section 2.20(d).

"PST" means all taxes payable under the *Retail Sales Tax Act* (Ontario) or any similar statute of another jurisdiction of Canada.

"Purchase Money Lien" means a Lien (including hypothecs of the vendor, rights of a lessor under a lease or leasing contract and the reservation of ownership of a seller under an instalment or conditional sale) taken or reserved in equipment to secure payment of all or part of its purchase price (including costs of assembly and installation and insurance related thereto, provided that such Lien (i) secures an amount not exceeding the purchase price of such personal property (including costs of assembly and installation and any insurance related thereto), (ii) extends only to such personal property (including insurance related thereto) and its proceeds, and (iii) is granted prior to, at time of or within 30 days after the purchase of such personal property.

"QST" means the Quebec sales tax imposed pursuant to an *Act respecting the Québec sales tax*.

"Refinancing" means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to **"Refinance"**) any Permitted Indebtedness being refinanced (**"Refinancing indebtedness"**); provided that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Permitted Indebtedness so extended, refinanced, refunded, replaced or renewed, except by an amount equal to unpaid accrued interest and premium (including applicable prepayment penalties) thereon plus fees and expenses reasonably incurred in connection therewith, commissions and expenses), (ii) no Refinancing Indebtedness shall have different obligors, or greater guarantees or security than, the Indebtedness being Refinanced, (iii) any Liens securing such Refinancing Indebtedness are not extended to any additional property of any Credit Party, provided that, if the Permitted Indebtedness being Refinanced is secured by a Lien on any Collateral, such Refinancing Indebtedness may be secured by a Lien on such Collateral (including any Collateral pursuant to after-acquired property clauses to the extent any such Collateral would have secured the Indebtedness being Refinanced) and (iv) the terms and conditions of the Refinancing Indebtedness taken as a whole shall not be materially more onerous to a Credit Party or less favorable to the Lenders than those that were applicable to the extended, refinanced, refunded, replaced or renewed Permitted Indebtedness.

"Register" has the meaning set out in Section 9.4(c).

"Reimbursement Obligations" means, at any date, the sum of the outstanding obligations of the Borrower to reimburse the Agent at such time to the extent that the Agent is obligated to reimburse (a) the Issuing Bank at such time pursuant to any Letter of Credit and (b) the F/X Bank at such time pursuant to any F/X Contract.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Release" is to be broadly interpreted and shall include an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of any Hazardous Materials which is or may be in breach of any Environmental Laws.

"Repayment Notice" means a notice in the form of Exhibit D.

"Required Lenders" means, at any time, Lenders having Commitments which represent, in the aggregate, more than 50% of the aggregate amount of the Commitments of all the Lenders under the Credit.

"Responsible Officer" means, with respect to any Person, the chairman, the president, any vice president, the chief executive officer, chief financial officer or the chief operating officer, and, in respect of financial or accounting matters, any Financial Officer of such Person; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of the Borrower.

"Restricted Payment" shall mean, with respect to any Person, any payment by such Person (i) of any dividends or distributions on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any of its Equity Securities or any warrants, options or rights to acquire any of its Equity Securities, or the making by such Person of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a shareholder of such Person or to an Affiliate of a shareholder of such Person, (v) in respect of an Investment, other than Permitted Investments, or (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof, but excluding bonuses paid to employees of such Person in the ordinary course of business.

"Revolving Loan" has the meaning set out in Section 2.1.

"Rolling Period" means, as at the end of any Fiscal Month, such Fiscal Month taken together with the eleven immediately preceding Fiscal Months.

"Security Documents" means the agreements or instruments described or referred to in Section 4.1 and Section 5.11 (including, to the extent such Section describes an amendment, the agreement or instrument amended thereby) and any and all other agreements or instruments now or hereafter executed and delivered by any Credit Party or any other Person as security for the payment or performance of all or part of the obligations of the Borrower (or such Credit Party or other Person) hereunder or under any other Loan Documents, as any of the foregoing may have been, or may hereafter be, amended, modified or supplemented.

"Settlement Date" means the date, which shall be weekly, or more frequently at the discretion of the Agent upon the occurrence of an Event of Default or a continuing decline or increase of the Loans, that the Agent and the Lenders shall settle among themselves so that (a) the Agent shall not at any time have, as the agent for the Lenders, any money at risk, and (b) on such Settlement Date each Lender shall be responsible for its *pro rata* amount of the Revolving Loan, calculated on the basis of each of their Applicable Percentages in respect of the outstanding Exposure as at such date, provided that each Settlement Date shall be a Business Day.

"Standard Cost" means the standard cost of Inventory determined in accordance with the applicable Credit Party's published GAAP compliant inventory policy, consistently applied, and excludes any portion of cost representing intercompany profit or gain in the case of Inventory acquired from an Affiliate of any Credit Party.

"Store" means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Credit Party.

"Subsidiary" means, with respect to any Person (in this definition, the "parent") at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Swap Transaction" means any transaction or agreement entered into between the Borrower and any other counterparty with respect to any swap, forward, future or derivative transaction or agreement or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, franchise, net worth, branch transfer, land transfer, profits, withholding, payroll, employer health, excise, stamp, documentary, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, territorial, municipal and foreign Governmental Authorities), and whether disputed or not.

"Term Administrative Agent" means GSO Capital Partners LP in its capacity as administrative agent under the Term Loan Agreement.

"Term Loan Agreement" means that certain term loan credit agreement dated as of May 24, 2007 by and between Grafton-Fraser, the Term Administrative Agent and the lenders from time to time party thereto (as such agreement may be amended, supplemented, restated, amended and restated or otherwise modified from time to time as permitted under the Intercreditor Agreement, including without limitation pursuant to the amended and restated credit agreement dated as of June 16, 2009).

"Term Loan Documents" means the Term Loan Agreement and any instruments or agreements now or hereafter entered into in connection with the Term Loan Agreement, as such instruments or agreements may be amended, modified or supplemented from time to time.

"Termination Date" means the date the Obligations (other than contingent obligations with respect to which no claim has been made), are paid and satisfied in full and the Commitments are cancelled.

"Transactions" means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit and the entering into of F/X Contracts hereunder.

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Canadian Prime Rate, the CDOR Rate, the Base Rate, the LIBO Rate, or is a Letter of Credit.

"UCC" means the Uniform Commercial Code as in effect from time to time for the applicable State in question.

"U.S. Dollars" and **"U.S.\$"** refer to lawful money of the United States of America.

"U.S.\$ Equivalent" means, on any day, the amount of U.S. Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of Canadian Dollars based on the spot rate at which U.S. Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

"Violation Notice" means any notice received by any Credit Party from any Governmental Authority under any Environmental Law that the applicable Credit Party or any of its property and assets is not in compliance with the requirements of any Environmental Law.

"Weekly Reporting Trigger Period" means, the period commencing on the day that either (1) an Event of Default occurs, or (2) Excess Availability for five consecutive days in any month (other than January of each year) is less than 10% of the Borrowing Base, and continuing until (i) during the preceding thirty (30) consecutive days (1) no Event of Default existed, and (2) Excess Availability has been greater than 10% of the Borrowing Base, at all times during the preceding 30 consecutive days; provided, that, if a Weekly Reporting Trigger Period has ended in any Fiscal Year, any subsequent Weekly Trigger Period commencing in that Fiscal Year shall continue until no earlier than the following Fiscal Year.

1.2 Classification of Loans and Borrowings.

For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Canadian Prime Loan") and Borrowings also may be classified and referred to by Type (e.g., a "Canadian Prime Rate Borrowing").

1.3 Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" is disjunctive; the word "and" is conjunctive. The word "shall" is mandatory; the word "may" is permissive. The words "to the knowledge of" means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by the Responsible Officer of that Person) making the representation, warranty or other statement, after exercising reasonable due diligence under the circumstances (in accordance with the standard of what a Person in good faith in similar circumstances would have done). Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to

any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any statute or any Section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or Section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

1.4 Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Agreement and used in the preparation of the consolidated financial statements of the Borrower referred to in Section 5.1(a), and all calculations with respect to inventory shall use the same method for inventory valuation as used in the preparation of the Borrower's financial statements on the date hereof. In the event of a change in GAAP, the Borrower and the Agent shall negotiate in good faith to revise (if appropriate) such ratios and covenants to give effect to the intention of the parties under this Agreement as at the Effective Date, and any new ratio or covenant shall be subject to approval by the Required Lenders. In the event that such negotiation is unsuccessful, all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Effective Date.

1.5 Time.

All time references herein shall, unless otherwise specified, be references to local time in Toronto, Ontario. Time is of the essence of this Agreement and the other Loan Documents.

1.6 Permitted Liens.

Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

1.7 Joint and Several.

(a) **Joint and Several Liability.** Except as expressly provided otherwise herein, the term "Borrower" as used herein shall include Grafton-Fraser and Jones New York Canada and each of them or either of them, as the context may require. Each Borrower acknowledges that (i) it is a co-borrower hereunder and shall be jointly and severally, with the other Borrower, directly and primarily liable to the Agent and the Lenders for the Obligations regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans received or the manner in which the Agent or such Lender accounts for such Loans or other extensions of credit on its books and records, (ii) each of the Obligations shall be secured by all of the Collateral, (iii) each Borrower shall have the obligations of co-maker and shall be primary obligors with respect to the Loans and the other Obligations, it being agreed that the Loans to each

Borrower inure to the benefit of all Borrowers, and (iv) the Agent and the Lenders are relying on such joint and several liability of the Borrowers as co-makers in extending the Loans hereunder. Notwithstanding anything to the contrary contained in this Agreement, the Agent shall be entitled to rely upon any request, notice or other communication received by it from either Borrower on behalf of both Borrowers, and shall be entitled to treat its giving of any notice hereunder pursuant to Section 9.1 hereof as notice to each Borrower.

(b) **Unconditional Liability.** Each Borrower's Obligations arising as a result of the joint and several liability of the Borrower hereunder with respect to the Loans or any other extensions of credit made to the other Borrower hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrower or of any document evidencing all or any part of the Obligations of the other Borrower, (ii) the absence of any attempt to collect the Obligations from the other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Agent or any Lender with respect to any provision of any instrument evidencing the Obligations of the other Borrower, or any part thereof, or any other agreement now or hereafter executed by the other Borrower and delivered to the Agent or any Lender, (iv) the failure by the Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or Collateral for the Obligations of the other Borrower, or (v) any other circumstances which might constitute a legal or equitable discharge or defense of any other Borrower.

(c) **Waiver of Subordination and Other Rights.** With respect to each Borrower's Obligations arising as a result of the joint and several liability of the Borrower hereunder with respect to the Loans or other extensions of credit made to any of the other Borrower hereunder, each Borrower waives, until the Termination Date, any right to enforce any right of subrogation or any remedy which the Agent or any Lender now has or may hereafter have against such Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Agent or any Lender to secure payment of the Obligations or any other liability of the Borrower to the Agent or any Lender.

(d) **No Modification or Release of Obligations.** No payment or payments made by either of the Borrower or any other Person or received or collected by the Agent or any Lender from either of the Borrower or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed (except to the extent the Obligations are satisfied) to modify, release or otherwise affect the liability of each Borrower under this Agreement, which shall remain liable for the Obligations until the Obligations are paid in full and the Credit is terminated.

1.8 Interpretation Clause (Québec).

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim" and a resolutive clause, (f) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall

be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" shall be deemed to include "legal hypothecs"; (l) "joint and several" shall be deemed to include "solidary"; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary"; (o) "servitude" shall be deemed to include "easement"; (p) "priority" shall be deemed to include "prior claim"; (q) "survey" shall be deemed to include "certificate of location and plan"; (r) "state" shall be deemed to include "province"; (s) "fee simple title" shall be deemed to include "absolute ownership". The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. *Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en la langue anglaise seulement.*

ARTICLE 2 THE CREDITS

2.1 Commitments.

Subject to the terms and conditions set forth herein, each Lender commits to make Loans (each such Loan made under this Section 2.1, a "Revolving Loan") to the Borrower from time to time during the period commencing on the Effective Date and ending on the Maturity Date (each such commitment, a "Commitment") in an aggregate principal amount up to the amount set forth beside such Lender's name in Schedule A under the heading "Commitment", provided that a Lender shall not be required to extend further credit hereunder if any further extension of credit made by such Lender as requested by the Borrower would result in (i) such Lender's Exposure exceeding such Lender's Commitment, or (ii) the sum of the total Exposure exceeding either the total Commitment or the Borrowing Base. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow Revolving Loans. In addition, the Borrower may, subject to the Agent's prior written approval in its sole discretion, on at least ten (10) days' prior written notice to the Agent, from time to time permanently increase the Commitment in an aggregate principal amount of up to \$5,000,000, provided that (i) such Commitment increase shall be offered to each Lender on a *pro rata* basis, (ii) each Lender may agree to accept or decline a requested Commitment increase in its sole discretion, (iii) no increase in the Commitments shall be made if a Default or an Event of Default shall have occurred and be continuing or would result after giving effect to such increase, (iv) each such increase shall be in a minimum principal amount of \$2,500,000, (v) the Borrower shall pay to the Agent, for the account of the Lenders, a one-time fee in an amount equal to 0.30% of the amount of each such Commitment increase, and (vi) the aggregate principal amount of all such Commitment increases shall not exceed \$5,000,000. The *pro rata* share of each Lender's Commitment hereunder shall automatically increase as a result of any permitted increase in the Commitment hereunder, and Schedule A shall be amended to reflect any such permitted increase.

2.2 Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders rateably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to the Letter of Credit Sub-Line limitation, the F/X Contract Sub-Line limitation, the Borrowing Base limitations and the other limitations on Loans and Borrowings as provided in this Agreement, each Borrowing shall be comprised entirely of Canadian Prime Loans, Bankers Acceptances, BA Equivalent Loans, Base Rate Loans, LIBO Rate Loans and/or the issuance of Letters of Credit or the entry into F/X Contracts.

(c) Each Lender may at its option make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not result in any increased costs for the Borrower or affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. At the commencement of each Interest Period for any LIBO Rate Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the commencement of each Contract Period for any BA Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five BA Borrowings or five LIBO Rate Borrowings outstanding.

2.3 Requests for Borrowings.

(a) The initial Borrowings hereunder on the Effective Date in respect of the Revolving Loans shall be Canadian Prime Borrowings and/or Base Rate Borrowings. Thereafter, to request a Borrowing, the Borrower shall notify the Agent of such request by written Borrowing Request (i) in the case of a LIBO Rate Borrowing, not later than 11:00 a.m., Toronto time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a BA Borrowing, not later than 11:00 a.m., Toronto time, two Business Days before the date of the proposed Borrowing, or (iii) in the case of a Canadian Prime Borrowing or a Base Rate Borrowing, not later than 10:00 a.m., Toronto time, on the date of the proposed Borrowing; or (ii) in the case of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19, not later than 11:00 a.m., Toronto time, five (5) Business Days before the date of the proposed Borrowing. The Agent and each Lender are entitled to rely and act upon any written Borrowing Request given or purportedly given by the Borrower, and the Borrower hereby waives the right to dispute the authenticity and validity of any such request or resulting transaction once the Agent or any Lender has advanced funds or the Issuing Bank has issued a Letter of Credit based on such written Borrowing Request. Each such written Borrowing Request shall be substantially in the form of Exhibit B and shall specify the following information:

- (i) the aggregate amount of each requested Borrowing and the Type thereof;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Canadian Prime Borrowing, a BA Borrowing, a Base Rate Borrowing, a LIBO Rate Borrowing, or the issuance of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19;
- (iv) in the case of a LIBO Rate Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period", and in the case of a BA Borrowing, the initial Contract Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Contract Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of this Agreement.

(b) If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Canadian Prime Borrowing (if denominated in Canadian Dollars) or a Base Rate Borrowing (if denominated in U.S. Dollars). If no currency is specified, the Borrowing shall be denominated in Canadian Dollars. If no Interest Period is specified with respect to any requested LIBO Rate Borrowing, then the Borrower shall be deemed to have selected an Interest Period of a one month duration. If no Contract Period is specified with respect to any requested BA Borrowing, then the Borrower shall be deemed to have selected a Contract Period of a one month duration.

(c) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the Borrower may elect to convert a Borrowing to a different Type or to continue such Borrowing and, in the case of (i) a LIBO Rate Borrowing, may elect a new Interest Period therefor, or (ii) a BA Borrowing, may elect a new Contract Period therefor, all as provided in this Section 2.3(c). The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing in accordance with their Applicable Percentage, and the Loans comprising each such portion shall be considered a separate Borrowing. To make an election pursuant to this Section 2.3(c), the Borrower shall notify the Agent of such election in the manner and by the time that a Borrowing Request would be required under Section 2.3(a) if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. In addition to the information specified in Section 2.3(a), each Borrowing Request shall specify the Borrowing to which such request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing.

(d) In the absence of a timely and proper election with regard to (i) LIBO Rate Borrowings, the Borrower shall be deemed to have elected to convert such LIBO Rate Borrowings to Base Rate Borrowings on the last day of the Interest Period of the relevant LIBO Rate Borrowings, and (ii) BA Borrowings, the Borrower shall be deemed to have elected to convert such BA Borrowings to Canadian Prime Borrowings on the last day of the Contract Period of the relevant BA Borrowings.

(e) The Agent shall not incur any liability to the Borrower as a result of acting in accordance with any notice or request referred to in this Section 2.3, which notice or request the Agent believes in good faith to have been given by an officer duly authorized by the Borrower to request Loans on its behalf or for otherwise acting in good faith under this Section 2.3, and the crediting of Loans to the Borrower's disbursement accounts, or transmittal to such Person or other bank account as the Borrower shall direct, shall conclusively establish the obligation of the Borrower to repay such Loans as provided herein. Nothing herein shall, however, release or be deemed to release the Agent in respect of its gross negligence or wilful misconduct.

(f) Except to the extent otherwise permitted to the contrary hereunder, any Borrowing Request made pursuant to in this Section 2.3 shall be irrevocable and the Borrower shall be bound to borrow the funds requested therein in accordance therewith.

2.4 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Toronto time, to the account of the Agent most recently designated by it for such purpose by notice to the Lenders. The Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower and designated by the Borrower in the applicable Borrowing Request. The Borrower shall satisfy Reimbursement Obligations promptly as they arise by way of a request for a Loan and all Loans made hereunder to satisfy Reimbursement Obligations:

(i) in respect of any Letter of Credit shall be remitted by the Agent to the Issuing Bank in accordance with such Letter of Credit (unless the Issuing Bank has already been fully reimbursed directly by the Borrower in respect of drawings under the Letter of Credit), and (ii) in respect of any F/X Contract shall be remitted by the Agent to the F/X Bank in accordance with such F/X Contract (unless the F/X Bank has already been fully reimbursed directly by the Borrower in respect of all such losses in respect of the F/X Contract).

(b) The Agent may, upon notice given by the Agent no later than 12:00 p.m. Toronto time on any Settlement Date, request each Lender to make, and each Lender hereby agrees to make, a Revolving Loan in an amount equal to such Lender's Applicable Percentage (calculated with respect to the aggregate Commitments then outstanding) of the aggregate amount of the Revolving Loans made by the Agent from the preceding Settlement Date to the date of such notice. Each Lender's obligation to make the Revolving Loans and to make the settlements pursuant to this Section 2.4 shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defence or other right which any such Lender or the Borrower may have against the Agent, the Borrower, any Lender or any other Person for any reason whatsoever; (ii) any adverse change in the condition (financial or otherwise) of the Borrower; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. Without limiting the liability and obligation of each Lender to make such advances, the Borrower authorizes the Agent to charge the Borrower's loan account to the extent amounts received from the Lenders are not sufficient to repay in full the amount of any such deficiency. To the extent that any Lender has failed to fund all such payments and Revolving Loans, the Agent shall be entitled to set off the funding short-fall against that Lender's *pro rata* share of all payments received from the Borrower.

(c) The Agent, for the account of the Lenders, shall disburse all amounts to the Borrower and shall handle all collections. It is understood that for purposes of advances to the Borrower and for purposes of this Section 2.4, the Agent is using the funds of the Agent.

(d) Unless the Agent shall have been notified in writing by any Lender prior to any advance to the Borrower that such Lender will not make the amount which would constitute its share of the Borrowing on such date available to the Agent, the Agent may assume that such Lender shall make such amount available to the Agent on a Settlement Date, and the Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. A certificate of the Agent submitted to any Lender with respect to any amount owing under this Section 2.4 shall be conclusive, absent manifest error. If such Lender's share of such Borrowing is not in fact made available to the Agent by such Lender on the Settlement Date, the Agent shall be entitled to recover such amount with interest thereon at the rate per annum applicable to Revolving Loans hereunder, on demand, from the Borrower without prejudice to any rights which the Agent may have against such Lender hereunder. Nothing contained in this Section 2.4(d) shall relieve any Lender which has failed to make available its Applicable Percentage of any borrowing hereunder from its obligation to do so in accordance with the terms hereof. Nothing contained herein shall be deemed to obligate the Agent to make available to the Borrower the full amount of a requested advance when the Agent has any notice (written or otherwise) that any of the Lenders will not advance its Applicable Percentage thereof.

(e) On the Settlement Date, the Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have their Applicable Percentage share of all outstanding Obligations other than in respect of F/X Contracts, which shall remain with the F/X Bank.

(f) The Agent shall forward to each Lender, at the end of each Fiscal Month, a copy of the account statement rendered by the Agent to the Borrower.

(g) The Agent shall, after receipt of any interest and fees earned under this Agreement, promptly remit to the Lenders their Applicable Percentage of any (i) fees they are entitled to receive, and (ii) interest computed at the rate and as provided for in this Agreement on all outstanding amounts advanced by the Lenders on each Settlement Date, prior to adjustment, that are subsequent to the last remittance by the Agent to the Lenders of such interest amounts. This shall not apply to fees in respect of F/X Contracts, which shall be retained by the F/X Bank.

2.5 Interest.

(a) The Loans comprising each Canadian Prime Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin from time to time in effect. The Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at a rate per annum equal to the Base Rate plus the Applicable Margin from time to time in effect. The Loans comprising each LIBO Rate Borrowing shall bear interest (computed on the basis of the actual number of days in the relevant Interest Period over a year of 360 days) at the LIBO Rate for the Interest Period in effect for such LIBO Rate Borrowing plus the Applicable Margin in effect on the first day of the relevant Interest Period. The Loans comprising each BA Borrowing shall be subject to an Acceptance Fee, which shall be payable as set out in Section 2.11.

(b) If a Default or an Event of Default has occurred and is continuing, all amounts outstanding hereunder (including, without duplication, all Loans and all Letter of Credit Exposure and F/X Exposure) shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loan or, in the case of any amount not constituting principal or interest on a Loan, at a rate equal to 2% plus the rate otherwise applicable to, in the case of Canadian Dollar amounts, Canadian Prime Loans, or in the case of U.S. Dollar amounts, Base Rate Loans.

(c) Accrued interest on each Loan shall be payable in arrears on the earlier of (i) each applicable Interest Payment Date, and (ii) the date of termination of the Commitments. In addition, in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Canadian Prime Rate, Base Rate, LIBO Rate or BA Rate shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(e) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(f) If any provision of this Agreement would oblige the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with

retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under Section 2.5; and
- (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of Section 347 of the *Criminal Code* (Canada).

(g) Notwithstanding anything to the contrary contained in this Agreement, if, as a result of any restatement or other adjustment to the financial statements delivered under this Agreement (including any adjustment to unaudited financial statements as a result of subsequent audited financial statements) or for any other reason (including without limitation an adjustment on any subsequent Borrowing Base Report delivered hereunder), the Borrower, the Agent or the Lenders determine that Excess Availability as of any applicable date was inaccurate and, as a result of such inaccuracy, the Applicable Margin applicable to any Loans or any fees for any period was lower than would otherwise be the case had such inaccuracy not occurred, then the Borrower shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders, promptly on demand by the Agent (or, if an Event of Default pursuant to any of Sections 7.1(h), (i) or (j) shall have occurred and be continuing, automatically and without further action by the Agent), an amount equal to the excess of the amount of interest and fees that should have been paid by the Borrower for such period over the amount of interest and fees actually paid by the Borrower for such period, plus interest on such amount at the rate otherwise applicable herein. The Borrower's obligations under this Section 2.5(g) shall survive the termination of the Commitments and the repayment of all indebtedness hereunder.

2.6 Termination and Reduction of Commitments.

(a) Unless previously terminated and subject to any earlier demand for payment upon the occurrence of an Event of Default, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may, upon five Business Days prior written notice to the Agent, permanently cancel any unused portion of the Commitments, provided, however, that the Borrower shall pay to the Agent, on the date on which such cancellation becomes effective, the Early Termination Fee in respect of the cancelled portion of the Commitments. The Agent shall promptly notify each Lender of the receipt by the Agent of any such notice. Any such cancellation shall be applied rateably in respect of the Commitments of each Lender. Each notice delivered by the Borrower pursuant to this Section 2.6(b) shall be irrevocable. For greater certainty, the Early Termination Fee shall be payable if this Agreement terminates prior to the Maturity Date for any reason, including following the occurrence of an Event of Default. Notwithstanding the termination of this Agreement, until the Termination Date, the Credit Parties shall remain bound by the terms of this Agreement and under the Loan Documents and shall not be relieved of any of their Obligations and the Agent and Lenders shall retain all their rights and remedies hereunder and under the Loan Documents (including, without limitation, in all then existing and after-arising Collateral).

(c) Unless the Commitments have been previously terminated, upon the occurrence of the Maturity Date, the Commitment of each Lender shall be permanently reduced to an amount equal to the amount of the Loans made by such Lender at such date and the Commitment shall be permanently reduced by an amount equal to such reduction of such Commitment.

(d) Subject to the other terms and conditions of this Agreement and unless the Commitments have been earlier terminated, the Commitments shall be available hereunder from the Effective Date until the Maturity Date.

2.7 Repayment of Loans.

The Borrower hereby unconditionally promises to pay to (i) the Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan and all other Obligations on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1.

2.8 Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Borrowing made by such Lender hereunder, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Agent shall maintain accounts in which it shall record (i) the amount of each Borrowing made hereunder, the Type thereof and, in the cases of BA Borrowings and LIBO Rate Loans, the relevant Contract Period or Interest Period, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to Sections 2.8(a) and (b) shall be *prima facie* evidence (absent manifest error) of the existence and amounts of the obligations recorded therein and shall be admissible in any action or proceeding arising therefrom; provided that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Borrowings in accordance with the terms of this Agreement. In the event of a conflict between the records maintained by the Agent and any Lender, the records maintained by the Agent shall govern.

(d) Any Lender may request that Loans (other than BA Borrowings) made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Agent and acceptable to the Borrower. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.9 Prepayments.

(a) Mandatory Borrowing Base Prepayments. If at any time the aggregate Exposure of all Lenders is in excess of (i) the Borrowing Base or (ii) the total Commitment, the Borrower shall, immediately pay to the Agent, for the account of the Lenders, the amount of such excess to be applied (i) first, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (ii) second, as a prepayment of the Revolving Loans, and (iii) third, as Cover for any remaining Bankers Acceptances, Letter of Credit Exposure and F/X Exposure in an amount of such remaining excess.

(b) Application of Cover Amount. The amount of Cover shall be paid by the Borrower under Section 2.9(a) to the Agent and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to, or charged in favour of, the Agent as security until such time as the applicable Letters of Credit and F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent shall (to the extent thereof) apply amounts in such collateral account in satisfaction of such Reimbursement Obligations.

(c) Currency Fluctuations. If, at any time, the Canadian \$ Equivalent of the Loans made by any Lender to the Borrower under any Credit exceeds the Commitment of such Lender under such Credit (any such excess being referred to in this Section as an "Excess Amount"), then the Borrower will forthwith, upon request from the Agent, repay to the Agent, for the account of each applicable Lender, an amount equal to the Excess Amount with respect to such Lender. The Agent shall request repayment of any Excess Amount forthwith upon request therefor by any Lender, but the Agent is not otherwise required to monitor Excess Amount levels or to request repayment thereof.

(d) Voluntary Prepayment. The Borrower may, upon delivery of a Repayment Notice to the Agent (delivered in accordance with the notice periods applicable to delivery of a Borrowing Request under Section 2.3(a)), prepay all or any part of a Canadian Prime Borrowing, or Base Rate Borrowing, BA Borrowing or LIBO Rate Borrowing (provided that any such prepayment of part of a BA Borrowing or a LIBO Borrowing, and any BA Borrowing or LIBO Borrowing not repaid by such partial payment, shall be in amounts contemplated by Section 2.2(c)), provided that a BA Borrowing or LIBO Rate Borrowing or part thereof may only be repaid on the last day of the Contract Period or Interest Period, as the case may be. Each Repayment Notice delivered hereunder shall be irrevocable. No prepayment under this Section 2.9(d) shall permanently reduce or terminate any of the Commitments.

(e) Notice by Agent. Upon receipt of any prepayment or Repayment Notice pursuant to this Section 2.9, the Agent shall promptly notify each applicable Lender of the contents thereof and of such Lender's Applicable Percentage of such prepayment and the corresponding Early Termination Fee, if any. Each Repayment Notice provided by the Borrower in respect of any permanent repayment or prepayment hereunder shall be in the form of Exhibit D and shall be irrevocable at such time as the Agent or any Lender has commenced taking any action pursuant to any such prepayment notice.

2.10 Fees.

(a) The Borrower shall pay to the Agent for the account of and distribution to each Lender rateably in accordance with each such Lender's Applicable Percentage, in Canadian Dollars, an unused line fee (the "**Unused Line Fee**") for the period commencing on the Effective Date to and including the Maturity Date (or such earlier date as the Commitments shall have been terminated entirely) computed at a rate of 0.25% per annum on the average daily excess amount of the aggregate Commitments over the aggregate Exposure (but excluding, solely for the purpose of this Section 2.10, any F/X Exposure). The Unused Line Fees on the Commitments shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be). All Unused Line Fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Agent for the account of each Lender rateably in accordance with each Lender's Applicable Percentage, a fee (a "**Letter of Credit Fee**") with respect to the provision of Letters of Credit, at the rate of 0.75% per annum on the average daily amount of the Letter of Credit Exposure with respect to documentary Letters of Credit and at the rate of 1.50% per annum on the average daily amount of the Letter of Credit Exposure with respect to standby Letters of Credit, in each case during the period from and including the Effective Date (or the date on which any Letter of Credit Exposure first exists to but excluding the later of: (i) the date of termination of the Commitments and (ii) the date on which there ceases to be any Letter of Credit Exposure. All such Letter of Credit Fees shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be); provided that all Letter of Credit Fees, together with all Standard Letter of Credit Fees (as defined below), accruing after the date on which the Commitments terminate shall be payable on demand. All Standard Letter of Credit Fees payable pursuant to this Section 2.10(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrower also agrees to pay to the Issuing Bank, the Issuing Bank's standard fees (the "**Standard Letter of Credit Fees**") with respect to the issuing, administration, handling, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such Standard Letter of Credit Fees shall be payable within 10 days after demand by the Agent or the Issuing Bank. It is acknowledged and agreed by the Lenders that the Issuing Bank may charge fees and other amounts directly to the Agent as a condition to issuing Letters of Credit and such fees and other amounts, to the extent that the Agent has not been reimbursed therefor by the Borrower, shall be charged by the Agent against each Lender's rateable share (taking into account each such Lender's Applicable Percentage) of other amounts owing from the Agent to each Lender (including, without limitation, each such Lender's rateable share of Letter of Credit Fees).

(c) The Borrower agrees to pay to the Agent, for its own account, on the Effective Date and on the first Business Day of each calendar month thereafter a collateral management fee in the amount of \$1,000 per month (the "**Collateral Management Fee**"), which the Borrower acknowledges and agrees shall be fully earned when paid.

(d) The Borrower agrees to pay to the Agent, for its own account, the Agent's standard charges, fees, costs and expenses for its field examinations, verifications and audits in an amount equal to \$1,000 per person per day plus such field examiner's and auditor's out-of-pocket expenses.

(e) The Borrower agrees to pay to the Agent, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between the Borrower and the Agent.

(f) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Agent, for its own account or for distribution to the Lenders or CIBC, as the case may be. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

2.11 BA Borrowings.

(a) Subject to the terms and conditions of this Agreement, the Borrower may request a Borrowing by presenting drafts for acceptance and purchase as Bankers Acceptances by the Lenders.

(b) No Contract Period with respect to a BA Borrowing shall extend beyond the Maturity Date. The Borrower shall not be entitled to obtain or roll over any BA Borrowings at any time that a Default or an Event of Default has occurred and is continuing.

(c) To facilitate availment of BA Borrowings, the Borrower hereby appoints each Lender as its attorney to sign and endorse on its behalf (in accordance with a Borrowing Request relating to a BA Borrowing), in handwriting or by facsimile or mechanical signature as and when deemed necessary by such Lender, blank forms of Bankers Acceptances in the form requested by such Lender. In this respect, it is each Lender's responsibility to maintain an adequate supply of blank forms of Bankers Acceptances for acceptance under this Agreement. The Borrower recognizes and agrees that all Bankers Acceptances signed and/or endorsed by a Lender on behalf of the Borrower shall bind the Borrower as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of the Borrower. Each Lender is hereby authorized (in accordance with a Borrowing Request relating to a BA Borrowing) to issue such Bankers Acceptances endorsed in blank in such face amounts as may be determined by such Lender; provided that the aggregate amount thereof is equal to the aggregate amount of Bankers Acceptances required to be accepted and purchased by such Lender. No Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any such instrument except the gross negligence or wilful misconduct of the Lender or its officers, employees, agents or representatives. Each Lender shall maintain a record with respect to Bankers Acceptances (i) received by it in blank hereunder, (ii) voided by it for any reason, (iii) accepted and purchased by it hereunder, and (iv) cancelled at their respective maturities. On request by or on behalf of the Borrower, a Lender shall cancel all forms of Bankers Acceptances which have been pre-signed or pre-endorsed on behalf of the Borrower and which are held by such Lender and are not required to be issued in accordance with the Borrower's irrevocable notice. Alternatively, the Borrower agrees that, at the request of the Agent, the Borrower shall deliver to the Agent a "depository note" which complies with the requirements of the *Depository Bills and Notes Act* (Canada), and consents to the deposit of any such depository note in the book-based debt clearance system maintained by the Canadian Depository for Securities.

(d) Drafts of the Borrower to be accepted as Bankers Acceptances hereunder shall be signed as set out in this Section 2.11. Notwithstanding that any person whose signature appears on any Bankers Acceptances may no longer be an authorized signatory for any Lender or the Borrower at the date of issuance of a Bankers Acceptances, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers Acceptances so signed shall be binding on the Borrower.

(e) Promptly following receipt of a Borrowing Request specifying a Borrowing by way of Bankers Acceptances, the Agent shall so advise the Lenders and shall advise each Lender of the aggregate face amount of the Bankers Acceptances to be accepted by it and the applicable Contract Period (which shall be identical for all Lenders). The aggregate face amount of the Bankers Acceptances to be accepted by the Lenders shall be in a minimum aggregate amount of \$500,000 and shall be a whole multiple of \$100,000, and such face amount shall be in the Lenders' *pro rata* portions of such Borrowing, provided that the Agent may in its sole discretion increase or reduce any Lender's portion of such BA Borrowing to the nearest \$100,000 without reducing the overall Commitments.

(f) Upon acceptance of a Bankers Acceptance by a Lender, such Lender shall purchase, or arrange for the purchase of, each Bankers Acceptance from the Borrower at the Discount Rate for such Lender applicable to such Bankers Acceptance accepted by it and provide to the Agent the Discount Proceeds therefor for the account of the Borrower. The Acceptance Fee payable by the Borrower to a Lender under Section 2.5 in respect of each Bankers Acceptance

accepted by such Lender shall be set off against the Discount Proceeds payable by such Lender under this Section 2.11.

(g) Each Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers Acceptances accepted and purchased by it.

(h) If a Lender is not a chartered bank under the *Bank Act* (Canada) or if a Lender notifies the Agent in writing that it is otherwise unable to accept Bankers Acceptances, such Lender will, instead of accepting and purchasing Bankers Acceptances, make a Loan (a "BA Equivalent Loan") to the Borrower in the amount and for the same term as the draft which such Lender would otherwise have been required to accept and purchase hereunder. Each such Lender will provide to the Agent the Discount Proceeds of such BA Equivalent Loan for the account of the Borrower. Each such BA Equivalent Loan will bear interest at the same rate which would result if such Lender had accepted (and been paid an Acceptance Fee) and purchased (on a discounted basis) a Bankers Acceptance for the relevant Contract Period (it being the intention of the parties that each such BA Equivalent Loan shall have the same economic consequences for the Lenders and the Borrower as the Bankers Acceptance which such BA Equivalent Loan replaces). All such interest shall be paid in advance on the date such BA Equivalent Loan is made, and will be deducted from the principal amount of such BA Equivalent Loan in the same manner in which the Discount Proceeds of a Bankers Acceptance would be deducted from the face amount of the Bankers Acceptance. Subject to repayment requirements, on the last day of the relevant Contract Period for such BA Equivalent Loan, the Borrower shall be entitled to convert each such BA Equivalent Loan into another type of Loan, or to roll over each such BA Equivalent Loan into another BA Equivalent Loan, all in accordance with the applicable provisions of this Agreement.

(i) With respect to each BA Borrowing, at or before 10:00 a.m. two Business Days before the last day of the Contract Period of such BA Borrowing, the Borrower shall notify the Agent in writing if the Borrower intends to issue Bankers Acceptances on such last day of the Contract Period to provide for the payment of such maturing BA Borrowing. If the Borrower fails to notify the Agent of its intention to issue Bankers Acceptances on such last day of the Contract Period, the Borrower shall provide payment to the Agent on behalf of the Lenders of an amount equal to the aggregate face amount of such BA Borrowing on the last day of the Contract Period thereof. If the Borrower fails to make such payment, such maturing Bankers Acceptances shall be deemed to have been converted on the last day of the Contract Period into a Canadian Prime Loan in an amount equal to the face amount of such Bankers Acceptances.

(j) The Borrower waives presentment for payment and any other defence to payment of any amounts due to a Lender in respect of a Bankers Acceptances accepted and purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers Acceptances being held, at the maturity thereof, by such Lender in its own right, and the Borrower agrees not to claim any days of grace if such Lender, as holder, sues the Borrower on the Bankers Acceptances for payment of the amount payable by the Borrower thereunder. On the last day of the Contract Period of a Bankers Acceptances, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrower shall pay the Lender that has accepted and purchased such Bankers Acceptances the full face amount of such Bankers Acceptances and, after such payment, the Borrower shall have no further liability in respect of such Bankers Acceptances and such Lender shall be entitled to all benefits of, and be responsible for all payments due to third parties under, such Bankers Acceptances.

(k) If a Lender grants a participation in a portion of its rights under this Agreement to a participant under Section 9.4(e), then, in respect of any BA Borrowing, a portion thereof may, at the option of such Lender, be by way of Bankers Acceptance accepted by such Participant. In such event, the Borrower shall upon request of the Agent or the Lender granting the participation execute

and deliver a form of Bankers Acceptance undertaking in favour of such Participant for delivery to such participant.

(l) Except as required by any Lender upon the occurrence of an Event of Default that is continuing, no BA Borrowing may be repaid by the Borrower prior to the expiry date of the Contract Period applicable to such BA Borrowing; provided, however, that the Borrower may defease any BA Borrowing by depositing with the Agent an amount that is sufficient to repay such BA Borrowing on the expiry date of the Contract Period applicable to such BA Borrowing.

2.12 Increased Costs; Illegality; Alternate Rate of Interest; Replacement of Lenders.

(a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender; or
- (ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement (including the imposition on any Lender of, or any change to, any Indemnified Tax or other charge with respect to its LIBO Rate Loans or any Letter of Credit or participation therein, or its obligation to make LIBO Rate Loans or any Letter of Credit);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender of participating in, issuing or maintaining any Letter of Credit or any Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy) and such Lender's desired return on capital, then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. Notwithstanding anything herein to the contrary, (a) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, and Basel Committee on Banking Supervision (or any successor or similar authority) or by United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, and (b) the Dodd-Frank Wall Street Reform and *Consumer Protection Act* (United States) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law for purposes of this Section 2.12(b) regardless of the date enacted, adopted, issued or implemented.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender as specified in Sections 2.12(a) or (b), together with a brief description of the Change of Law, shall be delivered to the Borrower, and shall be conclusive absent manifest error. In preparing any such certificate, a Lender shall be entitled to use averages and to make reasonable estimates, and shall not be required to "match contracts" or to isolate particular

transactions. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation.

(e) In the event that any Lender shall have determined (which determination shall be reasonably exercised and shall, absent manifest error, be final, conclusive and binding upon all parties) at any time that the current or reasonably expected foreign currency markets are unusually unstable or that the making or continuance of any Loan denominated in a currency other than Canadian Dollars has become unlawful or materially restricted as a result of compliance by such Lender in good faith with any Applicable Law, or by any applicable guideline or order (whether or not having the force of law and whether or not failure to comply therewith would be unlawful but compliance therewith would be regarded as mandatory), then, in any such event, such Lender shall give prompt notice (by telephone and confirmed in writing) to the Borrower and to the Agent of such determination (which notice the Agent shall promptly transmit to the other Lenders). Upon the giving of the notice to the Borrower referred to in this Section 2.12(e), the Borrower's right to request (by continuation, conversion or otherwise), and such Lender's obligation to make, Loans denominated in a currency other than Canadian Dollars shall be immediately suspended, and thereafter any requested Borrowing of Loans denominated in a currency other than Canadian Dollars shall, as to such Lender only, be deemed to be a request for a Canadian Prime Loan, and if the affected Loan or Loans are then outstanding, the Borrower shall immediately, or if permitted by Applicable Law, no later than the date permitted thereby, upon at least one Business Day prior written notice to the Agent and the affected Lender, convert each such Loan denominated in a currency other than Canadian Dollars into a Canadian Prime Loan, provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.12(e).

(f) If prior to the commencement of any Interest Period for a LIBO Rate Borrowing:

- (i) the Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period; or
- (ii) the Agent is advised by the Required Lenders that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Rate Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a LIBO Rate Borrowing, such Borrowing shall be made as a Base Rate Borrowing; provided that (A) if the circumstances giving rise to such notice do not affect all the Lenders, then requests by the Borrower for LIBO Rate Borrowings may be made to Lenders that are not affected thereby, and (B) if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(g) If any Lender requests compensation under this Section 2.12, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall use reasonable efforts to designate

a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Lender Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as the case may be, in the future, and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.13 Break Funding Payments.

In the event of (a) the failure by the Borrower to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered by or to the Borrower pursuant hereto, or (b) the payment or conversion of any principal of any BA Borrowing or LIBO Rate Loan other than on the last day of a Contract Period or, as applicable, Interest Period applicable thereto (including as a result of an Event of Default), or (c) the prepayment or conversion of any BA Borrowing or LIBO Rate Loan other than on the last day of the Interest Period applicable thereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrower and shall be *prima facie* evidence of the amount thereof, absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

2.14 Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if the Borrower or any Credit Party shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.14), the Agent, or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Borrower or any Credit Party shall make such deduction or withholding, and (iii) the Borrower or any Credit Party shall pay to the relevant Governmental Authority in accordance with Applicable Law the full amount deducted or withheld.

(b) In addition to the payments by the Borrower or any Credit Party required by Section 2.14(a), the Borrower or any Credit Party shall pay any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Borrower shall indemnify the Agent, and each Lender, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Agent, such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower or any Credit Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower or any Credit Party by a Lender, or by the Agent on its own behalf or on behalf of a Lender, shall be *prima facie* evidence thereof, absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes by the Borrower or any Credit Party to a Governmental Authority, the Borrower or any Credit Party shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) If the Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or any Credit Party or with respect to which the Borrower or any Credit Party has paid additional amounts pursuant to this Section 2.14 and, in the Agent's or such Lender's opinion, such refund amount is both reasonably identifiable and quantifiable by it without involving it in an unacceptable administrative burden, it shall pay over such refund amount to such Borrower or such Credit Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower or such Credit Party under this Section 2.14 with respect to the Taxes giving rise to such refund, and only to the extent that the Agent or Lender, as applicable, is satisfied that it may do so without prejudice to its right, as against the relevant Governmental Authority, to retain such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that such Borrower or such Credit Party, upon the request of the Agent or such Lender, agrees to repay the amount paid over to such Borrower or such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund to such Governmental Authority. Nothing herein contained shall (i) interfere with the right of the Agent or any Lender to arrange its affairs in whatever manner it thinks fit and, in particular, no Lender shall be under any obligation to claim relief for tax purposes on its corporate profits or otherwise, or to claim such relief in priority to any other claims, reliefs, credits or deductions available to it, or (ii) require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower, any Credit Party or any other Person.

2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14, or amounts otherwise payable hereunder) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Agent at the Payment Office, except that payments pursuant to any indemnities contained herein shall be made directly to the Persons entitled thereto. The Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension, provided that, in the case of any payment with respect to a LIBO Rate Loan, the date for payment shall be advanced to the next preceding Business Day if the next succeeding Business Day is in a subsequent calendar month. All payments under this Section 2.15 in respect of LIBO Rate Loans and Base Rate Loans shall be made in U.S. Dollars. All other payments under this Section 2.15 shall be made in Canadian Dollars. The Borrower hereby authorizes the Agent to debit the Borrower's loan account to effect any payment due to the Lenders or the Agent pursuant to this Agreement. Any resulting overdraft in such account shall be payable by the Borrower to the Agent in same day funds.

(b) Unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) shall apply), if at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest, fees, amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts payable hereunder, any available funds shall be applied (i) first, to pay any fees, indemnities or expense reimbursements then due to the Agent from the Borrower, (ii) second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower, (iii) third, to pay interest due in respect of all Revolving Loans, (iv) fourth, to pay or prepay principal of the Revolving Loans and unpaid Reimbursement Obligations and (v) fifth, to the payment of any other Obligation due to the Agent or any Lender by the Borrower, including amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts otherwise payable hereunder.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on or fees in respect of any of its Revolving Loans or its share of Reimbursement Obligations resulting in such Lender receiving payment of a greater proportion of the aggregate amount of any principal of or interest on or fees in respect of any of its Revolving Loans or participations in Reimbursement Obligations than the proportion to which it is entitled, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans or participations in Reimbursement Obligations owed to other Lenders (as the case may be) to the extent necessary so that the benefit of all such payments shall be shared by the Lenders rateably taking into account each of the Applicable Percentages in respect of each Lender; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) this Section 2.15(c) shall not apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Reimbursement Obligations to any assignee or participant, other than to the Borrower or other Credit Party or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Agent shall have received written notice from the Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the applicable rate for Canadian Prime Loans (if such amount is denominated in Canadian Dollars) or the applicable rate for Base Rate Loans (if such amount is denominated in U.S. Dollars).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.15(d), then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations under such Section 2.15(d) until all such unsatisfied obligations are fully paid.

(f) Nothing in this Agreement shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.16 Currency Indemnity.

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, the applicable Credit Party will, on the date of receipt by the Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Agent on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Agent is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the Credit Parties shall indemnify and save the Agent and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Agent from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order. If the amount of the Currency Due which the Agent is so able to purchase is greater than the amount of the Currency Due originally due to it, the Agent shall promptly remit the excess to the applicable Credit Party.

2.17 Collection of Accounts.

(a) Each Credit Party shall, and shall cause each other Credit Party to, at its expense, enforce, collect and receive all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms hereof. Any proceeds received by a Credit Party in respect of Accounts, and any cheques, cash, credit card sales and receipts, notes or other instruments or property received by a Credit Party with respect to any Collateral, shall be held by such Credit Party in trust or as mandatary for the Agent, separate from such Credit Party's own property and funds, and promptly deposited into the Blocked Accounts.

(b) Each Credit Party shall, and shall cause each other Credit Party to: (i) irrevocably authorize and direct any bank which maintains any Credit Party's initial receipt of cash, cheques and other items to promptly wire transfer all available funds to a Blocked Account; and (ii) advise all such banks of the Agent's security interest in such funds. The Borrower shall, and shall cause each other Credit Party to, provide the Agent with prior written notice of any and all deposit accounts opened or to be opened subsequent to the Effective Date. All amounts received by the Agent in payment of Accounts will be credited to the Blocked Account when the Agent is advised by its bank of its receipt of "collected funds" at the Agent's bank account in Toronto, Ontario on the Business Day of such advise if advised no later than 12:00 noon, Toronto time, or on the next succeeding Business Day if so advised after 12:00 noon, Toronto time. No cheques, drafts or other instrument received by the Agent shall constitute final payment to the Agent unless and until such instruments have actually been collected.

(c) Upon the occurrence of a Block Event, the Borrower shall, and shall cause each Credit Party to direct all of its account debtors to deposit any and all proceeds of Collateral into the Blocked Accounts. These requirements shall continue until the Block Event is terminated.

(d) Each Credit Party shall, and shall cause each other Credit Party to, establish and maintain, in its own respective name and at its expense, deposit accounts and lock boxes with such banks as are acceptable to the Agent (the "**Blocked Accounts**") into which the Borrower shall promptly cause to be deposited: (i) all proceeds of Collateral received by any Credit Party, including all amounts payable to any Credit Party from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any Credit Party at each of its locations, all as further provided in Section 2.17(b). The banks at which the Blocked Accounts are established and the applicable Credit Parties shall enter into three-party agreements, in form and substance satisfactory to the Agent (the "**Blocked Account Agreements**"), providing that, among other things, all cash, cheques and items received or deposited in the Blocked Accounts are subject to Liens in favour of the Agent, that the depository bank has no Lien upon, or right of set off against, the Blocked Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Blocked Account Agreements, and that after the occurrence and during the continuation of a Block Event, on a daily basis the depository bank will wire, or otherwise transfer, in immediately available funds, all funds received or deposited into the Blocked Accounts to such bank account as the Agent may from time to time designate for such purpose. The Borrower hereby confirms and agrees that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Agent, whether as proceeds of Inventory or other Collateral, shall be subject to the Liens in favour of the Agent. Concurrently with the establishment by any Credit Party after the date hereof of any bank account, such Credit Party shall provide the Agent with an amended Schedule 3.27 reflecting such new account.

(e) The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements is a contractual right provided to the Agent and the Lenders hereunder in order for the Agent and the Lenders to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Lenders are relying on the Borrower's acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Lenders to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

2.18 Letters of Credit.

Subject to Sections 4.1 and 4.2, the Borrower may request, and the Issuing Bank shall issue, Letters of Credit in accordance with this Section 2.18:

(a) Within the limits of the Commitments and the Borrowing Base, and the other limitations contained in this Agreement, the Borrower may obtain Letters of Credit from the Issuing Bank, denominated in Canadian Dollars or U.S. Dollars, in an amount not to exceed the outstanding amount of the Letter of Credit Sub-Line. The issuance of Letters of Credit for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Agent's sole discretion. It is understood that the term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Agent, the Issuing Bank and the Borrower. Any and all outstanding Letters of Credit shall be reserved dollar for dollar from the Borrowing Base as an Availability Reserve. Upon the expiry of a Letter of Credit, amounts reserved as an Availability Reserve in respect of such Letter

of Credit shall no longer be reserved from the Borrowing Base as an Availability Reserve. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(b) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each disbursement made by the Issuing Bank and not reimbursed by the Borrower on the date due, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If the Issuing Bank shall make any disbursement in respect of and in accordance with the terms and conditions of a Letter of Credit, the Borrower shall reimburse such disbursement by paying to the Agent an amount equal to such disbursement not later than 12:00 noon, on the date that such disbursement is made, if the Borrower shall have received notice of such disbursement prior to 10:00 a.m., on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 12:00 noon, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 10:00 a.m., on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower received such notice, if such notice is not received prior to such time on the day of receipt. In the alternative, the Agent shall have the right, without notice to the Borrower, to charge the Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Issuing Bank or the Agent under and in accordance with the terms and conditions of any Letter of Credit at the earlier of (a) payment by the Issuing Bank under any Letter of Credit; or (b) the occurrence and continuance of an Event of Default, unless the Borrower has provided Cover to the Agent in an amount equal to the face amount of all Letters of Credit. Any amount so charged to the Borrower's loan account shall be deemed a Canadian Prime Loan or a US Base Rate Loan hereunder, depending on the currency of the Borrower's payment obligation thereunder, and shall incur interest at the rate provided in Section 2.5.

(c) The Borrower unconditionally indemnifies the Agent and the Issuing Bank and holds the Agent and the Issuing Bank harmless from any and all loss, claim or liability incurred by the Issuing Bank or the Agent arising from any transactions or occurrences relating to Letters of Credit established or opened for the Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Agent or Issuing Bank or the failure of the Issuing Bank to substantially comply with the terms and conditions of the Letter of Credit. This indemnity shall survive termination of this Agreement. The Borrower agrees that any charges incurred by the Issuing Bank or the Agent in respect of any Letter of Credit shall be for the Borrower's account and may be charged to the Borrower's loan account.

(d) The Issuing Bank and the Agent shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in the documents; (c) the

validity, sufficiency or genuineness of any documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; partial or incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents; (e) any deviation from instructions; (f) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (g) any breach of contract between the shipper or vendors and the Borrower.

(e) Each of the Credit Parties agrees that any action taken by the Issuing Bank or the Agent, if taken in good faith, under or in connection with any Letter of Credit, the drafts or acceptances, or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Issuing Bank or the Agent to any Credit Party, absent gross negligence or wilful misconduct of the Agent and Issuing Bank and absent failure of the Issuing Bank to substantially comply with the terms and conditions of the Letter of Credit. In furtherance thereof, the Issuing Bank shall have the full right and authority to: (a) clear and resolve any questions of non compliance of documents; (b) give any instructions as to acceptance or rejection of any documents or goods; (c) execute any and all steamship or airways guarantees (and applications therefor), indemnities or delivery orders; (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; all in the reasonable discretion of the Issuing Bank. The Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments, all without any consent from any Credit Party. In addition, without the Issuing Bank's express consent and endorsement in writing, each of the Credit Parties agrees: (a) not to (i) execute any applications for steamship or airway guarantees, indemnities or delivery orders; (ii) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents; or (iii) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; and (b) upon the occurrence and during the continuance of an Event of Default, not to (i) clear and resolve any questions of non compliance of documents, or (ii) give any instructions as to acceptances or rejection of any documents or goods.

(f) Each of the Credit Parties shall, and shall cause each other Credit Party to: (a) procure any necessary import, export or other licenses or certificates for the import or handling of the Collateral; (b) comply with all Applicable Law in regard to the shipment and importation of the Collateral, or the financing thereof; and (c) deliver to the Issuing Bank or the Agent any certificates in that regard that the Agent may at any time request to be furnished. In connection herewith, the Borrower warrants and represents that all shipments made under any such Letters of Credit are in accordance with Applicable Law of the countries in which the shipments originate and terminate, and are not prohibited by any such Applicable Law. Each of the Credit Parties assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, provincial, state, federal or foreign Taxes, duties, or levies with respect to such Collateral. Any embargo, restriction, laws, customs or regulations of any country, state, city, or other political subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely the Borrower's risk, liability and responsibility.

(g) The Issuing Bank may be replaced at any time by written agreement among the Borrower, the Agent, the replaced Issuing Bank and the successor Issuing Bank. The Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter, and (ii) references herein to the term "Issuing

Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(h) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Agent or the Required Lenders demanding the deposit of Cover in respect of any Letter of Credit, the Borrower shall deposit in an account with the Agent, in the name of the Agent and for the benefit of the Lenders, the required amount of Cover with respect to such Letter of Credit. Such deposit shall be held by the Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement with respect to such Letter of Credit. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Agent to reimburse the Issuing Bank for disbursements pursuant to Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived or the Termination Date occurs.

2.19 F/X Contracts.

Subject to Sections 4.1 and 4.2, the Borrower may request F/X Contracts in accordance with this Section 2.19:

(a) Within the limits of the Commitments and the Borrowing Base and the other limitations as contained in this Agreement, the Borrower may obtain F/X Contracts in an amount such that the F/X Exposure does not to exceed the outstanding amount of the F/X Contract Sub-Line. The entry into F/X Contracts for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Agent's sole discretion. Any F/X Contract will be documented by separate documentation in the form required by the F/X Bank. The term, form and purpose of the F/X Contract and all confirmations and other documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the F/X Bank and the Borrower. Any and all outstanding F/X Exposure shall be reserved dollar for dollar from the Borrowing Base as an Availability Reserve. Upon the expiry of an F/X Contract and payment in full in respect thereof, amounts reserved as an Availability Reserve in respect of F/X Exposure relating to such F/X Contract shall no longer be reserved from the Borrowing Base as an Availability Reserve.

(b) The Agent shall have the right, without notice to the Borrower, to charge the Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Agent or the F/X Bank under any F/X Contract at such time which is the earlier of (a) payment by the Agent under the F/X Contract; or (b) the occurrence and continuance of an Event of Default, unless the Borrower has provided Cover to the Agent. Any amount charged to Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder,

depending on the currency of the Borrower's payment obligation in respect of such F/X Contract, and shall incur interest at the rate provided in Section 2.5.

(c) Each of the Credit Parties unconditionally indemnifies the Agent and the F/X Bank and holds the Agent harmless from any and all loss, claim or liability incurred by the Agent or the F/X Bank arising from any transactions or occurrences relating to F/X Contracts, the collateral relating thereto, and all Obligations thereunder, other than for (i) a loss of bargain and (ii) any such loss, claim or liability arising out of the gross negligence or wilful misconduct of the Agent or the F/X Bank, as applicable. This indemnity shall survive termination of this Agreement. The Borrower agrees that any charges incurred by the Agent or the F/X Bank, as applicable, are for the Borrower's account and may be charged to the Borrower's loan account.

(d) Each of the Credit Parties agrees that any action taken by the Agent, if taken in good faith, or any action taken by the F/X Bank, under or in connection with the F/X Contracts or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Agent or any Lender to any Credit Party in the absence of gross negligence and wilful misconduct of the Agent and the F/X Bank.

(e) All rights, remedies, duties and obligations of the Credit Parties in respect of F/X Contracts shall be secured by the Liens arising under the Security Documents.

2.20 Protective Advances

(a) Notwithstanding any other provision of this Agreement, at the request of the Borrower, the Agent may in its sole discretion (but with absolutely no obligation), make Revolving Loans to the Borrower, on behalf of the Lenders, in amounts that exceed Excess Availability (any such excess Revolving Loans are herein referred to collectively as "**Protective Advances**"), which the Agent, in its sole discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses and other sums payable under the Loan Documents), provided that no Protective Advance shall result in a Default due to the Borrower's failure to comply with Section 2.1 for so long as such Protective Advance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Protective Advance. Protective Advances may be made even if the conditions precedent set forth in Section 4.2 have not been satisfied. All Protective Advances shall be Canadian Prime Loans. The authority of the Agent to make Protective Advances is limited to an aggregate amount not to exceed \$500,000 at any time, no Protective Advance may remain outstanding for more than 30 days and no Protective Advance shall cause any Lender's aggregate Exposure to exceed its Commitment, provided that the Required Lenders may at any time revoke the authorization of the Agent to make Protective Advances. Any such revocation must be in writing and shall become effective prospectively upon the Agent's receipt thereof, but will not apply to any Protective Advance which is outstanding at the time of any such revocation.

(b) Upon the making of a Protective Advance by the Agent, each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage of the Commitments. The Agent may, at any time, require the Lenders to fund their participations in any Protective Advance. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Agent shall promptly distribute to such Lender, such Lender's

Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Protective Advance.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

In order to induce the Agent and the Lenders to enter into this Agreement, to make any Loans hereunder, to issue any Letters of Credit hereunder and to permit the Borrower to obtain F/X Contracts, each Credit Party hereby represents and warrants to the Agent and each Lender that each statement set forth in this Article 3 is true and correct on the date hereof, and will be true and correct on the date of each Borrowing, on the date each Letter of Credit is requested hereunder and on the date each Letter of Credit is issued hereunder:

3.1 Organization; Powers.

Each Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

3.2 Authorization; Enforceability.

The Transactions are within each Credit Party's corporate powers and have been duly authorized by all necessary corporate and, if required, shareholder action. This Agreement and the other Loan Documents and other documents delivered pursuant thereto have been duly executed and delivered by the Borrower and each other Credit Party party thereto and such Loan Documents constitute legal, valid and binding obligations of the Borrower and each other Credit Party party thereto, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Applicable Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

3.3 Governmental Approvals; No Conflicts.

The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except as disclosed in Schedule 3.3, (b) will not violate any Applicable Law or any order of any Governmental Authority, save for any violation which could not reasonably be expected to have a Material Adverse Effect, or the charter, by-laws or other organizational documents of the Borrower or any other Credit Party, (c) will not violate or result in a default under any Material Contract binding upon the Borrower or any other Credit Party or their respective assets, save for any violation or default which could not reasonably be expected to have a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any other Credit Party, except for any Lien arising in favour of the Agent, for the benefit of the Lenders, under the Loan Documents.

3.4 Financial Condition; No Material Adverse Effect.

(a) The Borrower has furnished to the Agent its consolidated balance sheets and statements of income, retained earnings and changes in financial position (i) as of and for the Fiscal Years ended January 31, 2015, February 1, 2014 and February 2, 2013, reported on by its auditors, and (ii) as of and for the fiscal month and the portion of the Fiscal Year ended August 29, 2015, certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower as of

such dates and for such periods in accordance with GAAP, subject to year end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since January 31, 2015, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) All information (including that disclosed in all financial statements) pertaining to the Borrower and the other Credit Parties (other than projections) (in this Section 3.4(c), the "Information") that has been or will be made available to the Lenders, or the Agent by the Borrower or any representative of the Borrower and the other Credit Parties, taken as a whole, is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lenders, or the Agent by the Borrower or any representative of the Borrower have been or will be prepared in good faith based upon reasonable assumptions.

(d) The Borrower has delivered to the Agent its monthly financial projections for the fiscal years ending in 2016 and ending in 2017, including projected balance sheets, income statements, and cash flow statements. Such financial projections have been prepared in good faith by the Credit Parties, are based on assumptions which are believed by the Credit Parties on the date hereof to be reasonable and are based on the best information available to each of the Credit Parties as of the date of preparation thereof.

3.5 Litigation.

(a) Except as disclosed in Schedule 3.5 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), there are no actions, suits, counterclaims or proceedings (including any Tax-related matter) by any Person or investigation by any Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of the other Credit Parties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement, any other Loan Document, or the Transactions.

(b) There has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

3.6 Compliance with Applicable Laws and Agreements.

Each Credit Party is in compliance with all Applicable Laws applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any other Credit Party has violated or failed to obtain any Authorization necessary to the ownership of any of its property or assets or the conduct of its business, which violation or failure could reasonably be expected to have (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

3.7 Ownership.

The registered and beneficial holders of all of the Equity Securities of the Borrower and the other Credit Parties are as set out on Schedule 3.7 (as such Schedule may be revised from time to time by the Borrower to reflect new facts).

3.8 Taxes.

Each Credit Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including all instalments with respect to the current period) and has made adequate provision for Taxes for the current period, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such other Credit Party, as applicable, has (to the extent required by GAAP) set aside on its books adequate reserves.

3.9 Titles to Real Property.

The Borrower and each other Credit Party have indefeasible fee simple title to their respective owned real properties (or in Quebec, immoveable properties), subject to Permitted Liens, and with respect to leased real properties, indefeasible title to the leasehold estate with respect thereto, subject to Permitted Liens, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.9.

3.10 Titles to Personal Property.

The Borrower and each other Credit Party have title to their respective owned personal property (or in Quebec, moveable properties), subject to Permitted Liens, and with respect to leased personal property, title to the leasehold estate with respect thereto, subject to Permitted Liens, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, including the Liens disclosed in Schedule 3.10.

3.11 Pension Plans.

Any Pension Plan is, with the exception of a supplemental retirement plan for eligible employees, duly registered under the ITA and any other Applicable Laws which require registration, has been administered in accordance with the ITA and such other Applicable Laws and no event has occurred which could reasonably be expected to cause the loss of such registered status, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. All material obligations of the Borrower and each other Credit Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with any Pension Plan and the funding agreements therefor and Applicable Laws have been performed on a timely basis, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. There are no outstanding disputes concerning the assets of any Pension Plan or any benefit plan, except for disputes that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. No promises of benefit improvements under any Pension Plan or any benefit plan has been made except where such improvement could not reasonably be expected to have a Material Adverse Effect. All contributions or premiums required to be made or paid by the Borrower and each other Credit Party to any Pension Plan or any benefit plan have been made on a timely basis in accordance with the terms of such plans and all Applicable Laws, save where the failure to do so could not reasonably be expected to have a Material Adverse Effect. There have been no improper withdrawals or applications of the assets of any Pension Plan or any benefit plan which could reasonably be expected to have a Material Adverse Effect. Except as disclosed in Schedule 3.11, as of the date hereof, each of the Pension

Plans (if any) is fully funded on a solvency basis and going concern basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with GAAP). Subject to the matters disclosed in Schedule 3.11 and as may hereafter be disclosed by the Borrower to the Agent:

- (i) for any Pension Plan or fund, and for any other employee benefit plan, which is a defined contribution plan requiring the Borrower or any Subsidiary to contribute thereto, or to deduct from payments to any individual and pay such deductions into or to the credit of such Pension Plan or fund, all required employer contributions have been properly withheld by the Borrower or such Subsidiary and paid into the funding arrangements for the applicable Pension Plan or fund in material compliance with the terms thereof,
- (ii) for any Pension Plan or fund and for any other employee benefit plan which provides benefits on a defined benefit basis ("**Defined Benefit Plan**"), in each case of the Borrower or any Subsidiary: (A) each such Pension Plan or fund or Defined Benefit Plan is fully funded on both a solvency basis and a going concern basis, (B) the most recent actuarial valuations in respect thereof are disclosed in Schedule 3.11, (C) no material changes have occurred since the date of such actuarial valuations which could reasonably be expected to materially adversely affect the conclusions of the actuary concerning the funding of any Defined Benefit Plan, and (D) all payments and contributions required to be remitted or paid to or in respect of each such Pension Plan or fund or Defined Benefit Plan, including special payments and any other payments in respect of any funding deficiencies or shortfalls, have been remitted or paid to or in respect of each such plan in a timely fashion, in accordance with the terms of the plan and all Applicable Law, and
- (iii) any assessments owed to the Pension Benefits Guarantee Fund established under the *Pension Benefits Act* (Ontario), or other assessments or payments required under similar legislation in any other jurisdiction, have been paid when due.

None of the Credit Parties nor any of their respective Subsidiaries is subject to the *United States Employee Retirement Income Security Act of 1974*, as amended. None of the Credit Parties maintains, contributes to, or is liable under any Defined Benefit Plan.

3.12 Disclosure.

The Borrower has disclosed to the Agent all agreements, instruments and corporate or other restrictions to which it or any other Credit Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the representations or warranties made by any Credit Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Credit Party in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to be stated therein to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

3.13 Defaults.

Except as disclosed in Schedule 3.13 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), (a) neither the Borrower nor any other Credit Party is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness of or Lien against the Borrower or any other Credit Party, or under any Material Contract to which the Borrower or any other Credit Party is a party or by which the Borrower or any other Credit Party is bound, except where such default, event or circumstance could not reasonably be expected to have a Material Adverse Effect or as disclosed to the Lenders in Schedule 3.13 and (b) no Default has occurred and is continuing.

3.14 Casualties; Taking of Properties.

Since January 31, 2015 except as disclosed by the Borrower to the Agent as of the date hereof, neither the business nor the properties of the Borrower or any other Credit Party have been affected in a manner that has had, or could reasonably be expected to have, a Material Adverse Effect as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labour disturbance, embargo, requisition or taking of property or cancellation of contracts, permits or concessions by any domestic or foreign Governmental Authority, riot, activities of armed forces, or acts of God or of any public enemy.

3.15 Subsidiaries.

Schedule 3.15 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) correctly sets forth the (i) names, (ii) form of legal entity, (iii) Equity Securities issued and outstanding, (iv) Equity Securities owned by each Credit Party or a Subsidiary of such Credit Party (and specifying such owner) in a Subsidiary, and (v) jurisdictions of organization of all Credit Parties and their Subsidiaries. Except as described in Schedule 3.15 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), the Credit Parties directly or indirectly do not own any Equity Securities or debt security which is convertible, or exchangeable, for Equity Securities of any other Person. Unless otherwise indicated in Schedule 3.15 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), all of the outstanding Equity Securities of each Credit Party is directly or indirectly owned of record and beneficially by the Borrower, there are no outstanding options, warrants or other rights to purchase Equity Securities of any such Credit Party, and all such Equity Securities so owned are duly authorized, validly issued, fully paid and non-assessable, and were issued in compliance with all applicable federal, provincial or foreign securities and other Applicable Laws, and are free and clear of all Liens, except for Permitted Liens.

3.16 Insurance.

All policies of fire, liability, workers' compensation, casualty, flood, business interruption and other forms of insurance owned or held by the Borrower or any other Credit Party which are material to the business of the Credit Parties are (a) sufficient for compliance with all requirements of Applicable Law and of all agreements to which the Borrower or any other Credit Party is a party save for non-compliance which could not reasonably be expected to have a Material Adverse Effect, (b) are valid, outstanding and enforceable policies, (c) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event public liability) as are usually insured against in the same general area by Persons engaged in the same or a similar business to the assets and operations of the Borrower and each other Credit Party, (d) will not in any way be materially adversely affected by, or terminate or lapse by reason of, the Transactions, and

(e) are held in the name of a Credit Party. All such material policies are in full force and effect, all premiums with respect to all such material policies have been paid in material compliance with their respective terms, and no notice of cancellation or termination has been received with respect to any such policy, save for any such policy which is ever replaced or adequate coverage is provided by other policies which remain in effect. Neither the Borrower nor any other Credit Party maintains any formalized self-insurance program with respect to its assets or operations or material risks with respect thereto. The certificate of insurance delivered to the Agent pursuant to Section 4.1(f) contains an accurate and complete description of all material policies of insurance owned or held by the Borrower and each other Credit Party on the Effective Date.

3.17 Solvency.

Neither the Borrower nor any other Credit Party is an "insolvent person" within the meaning of the BiA.

3.18 Material Contracts.

Schedule 3.18 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) sets out all Material Contracts. A true and complete copy of each such Material Contract has been delivered to the Agent. Each such Material Contract is in full force and effect. Neither the Borrower nor any other Credit Party is in default under or in breach of any term or condition of any Material Contract that would have, either individually or in the aggregate, a Material Adverse Effect, nor is the Borrower or any other Credit Party aware of any material default under or material breach of any term or condition of any Material Contract by any other party thereto that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No contract to which the Borrower or any other Credit Party is a party contains any material provisions which impose burdensome or onerous obligations on the Borrower or such other Credit Party which are inconsistent with prudent commercial activity by the Borrower or such other Credit Party and that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

3.19 Environmental Matters.

Except as disclosed to the Lenders in the Disclosed Matters schedule (Schedule 3.19) or as hereafter disclosed by the Borrower to the Agent:

(a) Environmental Laws. Neither any property of the Borrower or any other Credit Party nor the operations conducted thereon violate any applicable order of any court or Governmental Authority or any Environmental Laws, which violation could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(b) Notices and Permits. All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by the Borrower or any other Credit Party in connection with the operation or use of any and all property of the Borrower or any other Credit Party, including but not limited to past or present treatment, transportation, storage, disposal or Release of Hazardous Materials into the environment, have been duly obtained or filed, except to the extent the failure to obtain or file such notices, permits, licenses or similar authorizations could not reasonably be expected to have a Material Adverse Effect, or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(c) Hazardous Substances Carriers. All Hazardous Materials generated at any and all property of the Borrower or any other Credit Party have been treated, transported, stored and disposed of only in accordance with all Environmental Laws applicable to them, except to the extent the failure to have such Hazardous Materials transported, treated or disposed by such carriers could not reasonably be expected to have a Material Adverse Effect, and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, which carriers and facilities have been and are operating in compliance with such permits, except to the extent the failure to have such Hazardous Materials treated, transported, stored or disposed at such facilities, or the failure of such carriers or facilities to so operate, could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(d) Hazardous Materials Disposal. The Borrower and the other Credit Parties have taken all reasonable steps necessary to determine and have determined that no Hazardous Materials have been disposed of or otherwise released and there has been no threatened Release of any Hazardous Materials on or to any property of the Borrower or any other Credit Party other than in compliance with Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(e) No Contingent Liability. Except as disclosed by the Borrower to the Agent, the Borrower and the other Credit Parties have no material contingent liability in connection with any Release or threatened Release of any Hazardous Materials into the environment other than such contingent liabilities at any one time and from time to time which could reasonably be expected to exceed \$100,000 and for which adequate reserves for the payment thereof (to the extent required by GAAP) have been provided, or which could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Release or threatened Release.

3.20 Employee Matters.

Except as set forth on Schedule 3.20 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), none of the Borrower or any of the other Credit Parties, nor any of their respective employees, is subject to any collective bargaining agreement. There are no strikes, slowdowns, work stoppages or controversies pending or, to the best knowledge of the Borrower, threatened against the Borrower or any other Credit Party, or their respective employees, which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 3.20 or as hereafter disclosed by the Borrower to the Agent, none of the Borrower nor any other Credit Party is subject to an employment contract providing for a fixed term of employment or providing for special payments on termination of employment. Each of the Borrower and the other Credit Parties has withheld from each payment to each of their respective officers, directors and employees the amount of all Taxes, including income tax, Canada pension plan, employment insurance and other payments and deductions required to be withheld therefrom, and has paid the same to the proper taxation or other receiving authority in accordance with Applicable Law. None of the Borrower nor any other Credit Party is subject to any claim by or liability to any of their respective officers, directors or employees for salary (including vacation pay) or benefits which would rank in whole or in part *pari passu* with or prior to the Liens created by the Security Documents, other than Permitted Liens to the extent reserved for as Priority Payables of any Credit Party.

3.21 Fiscal Year.

The Fiscal Year of each Credit Party ends on the last week of January or the first week of February of each calendar year, as determined in accordance with the National Retail Federation "4-5-4" calendar guidelines.

3.22 Intellectual Property Rights.

The Borrower and each Credit Party is the registered and beneficial owner of, with good and marketable title, free of all licenses, franchises and Liens other than Permitted Liens, to all material patents, patent applications, trademarks, trademark applications, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other rights with respect to the foregoing and other similar property, used in or necessary for the present and planned future conduct of its business, without any conflict with the rights of any other Person, other than as listed on Schedule 3.22 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), or other than for such conflicts as could not reasonably be expected to have a Material Adverse Effect. All material patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by the Borrower or any other Credit Party, and all rights of the Borrower and each other Credit Party to the use of any patents, trademarks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights, are described in Schedule 3.22 (collectively, the "Intellectual Property Rights"). Except as set forth in Schedule 3.22 (as such Schedule may be revised from time to time by the Borrower to reflect new facts), no material claim has been asserted and is pending by any Person with respect to the use by the Borrower or any other Credit Party of any intellectual property or challenging or questioning the validity, enforceability or effectiveness of any intellectual property necessary for the conduct of the business of the Borrower or any other Credit Party. Except as disclosed in Schedule 3.22 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) or except as could not reasonably be expected to have a Material Adverse Effect, (i) the Borrower and each other Credit Party has the exclusive right to use the intellectual property which the Borrower (or each other Credit Party) owns, (ii) all applications and registrations for such material intellectual property are current, and (iii) to the knowledge of the Borrower and the other Credit Parties, the conduct of the Borrower's and each other Credit Party's business does not infringe the intellectual property rights of any other Person.

3.23 Restricted Payments.

Since January 31, 2015, no Restricted Payment has been declared, paid, or made upon or in respect of Equity Securities of any Credit Party except as expressly permitted hereby.

3.24 Indebtedness.

None of the Credit Parties nor any of their Subsidiaries has any Indebtedness except (a) the Obligations, (b) the Indebtedness set forth in the most recent financial statements delivered to the Agent, or the notes thereto, (c) Tax obligations (including deferred Taxes), trade payables and other contractual obligations arising in the ordinary course of business as carried on by the Credit Parties and their Subsidiaries since the date of such financial statements, and (d) Indebtedness permitted under Section 6.1.

3.25 Workers' Compensation.

None of the Credit Parties has any unpaid workers' compensation or like obligations except as are being incurred, and paid on a current basis in the ordinary course of business, and there are no proceedings, claims, actions, orders or investigations of any Governmental Authority relating to

workers' compensation outstanding, pending or, to their knowledge, threatened relating to them or any of their employees or former employees which could reasonably be expected to have a Material Adverse Effect.

3.26 Bank Accounts and Credit/Debit Card Processing Arrangements.

Schedule 3.26 contains a complete and accurate list of all bank accounts maintained by the Credit Parties with any bank or other financial institution as of the date hereof.

3.27 Real Property and Leases.

Schedule 3.27 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) hereto is a correct and complete list of all real property owned by each Credit Party, all leases and subleases of real property or personal property by any Credit Party, as lessee or sublessee, and all leases and subleases of real property or personal property by any Credit Party, as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists, save in any such case where the failure to be valid, enforceable or in full force and effect, or the existence of such default, could not reasonably be expected to have a Material Adverse Effect, provided that the Borrower shall provide the Agent with prompt written notice of any such occurrence.

3.28 Further Real Property Matters.

(a) Except as advised in writing to the Agent, no investigation or proceeding of any Governmental Authority is pending in respect of real property owned by any of the Credit Parties which investigation or proceeding could reasonably be expected to have a Material Adverse Effect. Except as disclosed in writing to the Agent, no part of any such real property has been condemned, taken or expropriated by any Governmental Authority, federal, state, provincial, municipal or any other competent authority which condemnation, taking or expropriation could reasonably be expected to have a Material Adverse Effect.

(b) Except as advised in writing to the Agent, all present uses in respect of any real property of the Credit Parties may lawfully be continued and all permitted uses are satisfactory for the Credit Parties' current and intended purposes, save where the consequences thereof could not reasonably be expected to have a Material Adverse Effect; and

(c) No Inventory is located at any leased real property of the Credit Parties except as indicated in Schedule 3.28 (as such Schedule may be revised from time to time by the Borrower to reflect new facts).

3.29 Jurisdictions of Credit Parties.

Schedule 3.29 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) sets out the various jurisdictions in which the Borrower and the other Credit Parties (i) has its registered office, chief executive office and principal place of business, and (ii) carries on business or maintains tangible assets having an aggregate value in excess of \$250,000.

3.30 Corporate Name; Prior Transactions.

Except as set forth in Schedule 3.30, none of the Credit Parties has during the five (5) years preceding the Effective Date been known by or used any other corporate or business name, or been a party to any amalgamation, merger or consolidation, or acquired all or substantially all of the

assets of any Person or acquired any of its or their Property out of the ordinary course of business. Except as set forth in Schedule 3.30 (as such Schedule may be revised from time to time by the Borrower to reflect new facts) there exist no trade names or styles under which any Credit Party sells Inventory or create Accounts or to which instruments in payment of Accounts may be made payable.

3.31 Brokers.

Except as set forth on Schedule 3.31, no broker or finder acting on behalf of any Credit Party or Affiliate thereof brought about the obtaining, making or closing of the Commitments or the Loans, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

3.32 Trade Relations.

Except as notified by the Borrower to the Agent, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in the business relationship of any Credit Party with any supplier material to its operations.

3.33 Term Loan Documents.

As of the Effective Date, the Borrower has delivered to the Agent a complete and correct copy of the Term Loan Documents, certified as such by an officer of the Borrower.

ARTICLE 4 CONDITIONS

4.1 Effective Date.

The obligations of the Lenders to make Loans or to permit the issuance of a Letter of Credit or to permit any Credit Party to obtain an F/X Contract shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) Credit Agreement. The Agent (or its counsel), each Lender, and the Issuing Bank shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of each party hereto, or (ii) written evidence satisfactory to the Agent (which may include facsimile transmission of a signed signature page of this Agreement) that each such party has signed a counterpart of this Agreement.

(b) Legal Opinions. The Agent shall have received a favourable written opinion of counsel to the Borrower and the Credit Parties, in a form satisfactory to the Agent, acting reasonably, and covering such other matters relating to the Borrower, the Credit Parties, this Agreement, the other Loan Documents, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Agent shall also have received favourable written opinions of such special and local counsel as may be reasonably required by the Agent (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied).¹ The Borrower hereby requests

¹ This is a customary request for opinions: corporate, execution and delivery, no conflicts, no authorizations, security interest, registration, enforceability, etc. To the extent that registrations are being made in jurisdictions where Faskens cannot give legal opinions, registration opinions will be required of those jurisdictions.

each such counsel to deliver such opinions and supporting materials. All opinions and certificates referred to in this Section 4.1(b) shall be addressed to the Agent and the Lenders and dated the Effective Date.

(c) Corporate Certificates. The Agent shall have received:

- (i) certified copies of the resolutions of the Board of Directors of each Borrower, and each other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and approving, as appropriate, the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Borrower or such other Credit Party is a party and evidencing corporate authorization with respect to such documents; and
- (ii) a certificate of a Responsible Officer of each Borrower, and any other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of such Person authorized to provide the certifications required pursuant to this Agreement, including certifications required pursuant to Section 5.1 and Borrowing Requests, and (C) that attached thereto is a true and complete copy of the articles of incorporation and bylaws of each Borrower, and any other Credit Party which is a party to any Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate.

(d) Closing Conditions Certificate. The Agent shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of the Borrower, confirming compliance with the financial covenants set forth in Section 5.12 and with the conditions set forth in Section 4.2(a) and (b).

(e) Fees. The Agent and the Lenders shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable out-of-pocket legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document.

(f) Insurance. The Agent shall have received a certificate of insurance coverage, naming the Lender as loss payee as its interest appears dated not more than 30 days prior to the Effective Date, evidencing that the Borrower and the Credit Parties are carrying insurance in accordance with Section 5.9 hereof.

(g) Inventory Control Systems; Appraisal; Field Audit. The Agent shall have reviewed and be satisfied with the Collateral, the inventory control systems, the books and records and the reporting capability of the Credit Parties. The Agent shall have received appraisals, completed by a reputable and independent appraisal firm at the expense of the Borrower, determining the net orderly liquidation value of the inventory of the Credit Parties. In addition, the Agent shall have received the results of an updated field audit.

(h) Opening Availability. The Borrowing Base on the Effective Date shall be sufficient in value, as determined by Agent, to provide the Borrower with Excess Availability, after giving effect to the extensions of credit to be made hereunder on the Effective Date (on a *pro forma* basis, with trade payables being paid currently, and expenses and liabilities being paid in the ordinary course of business and without acceleration of sales or deterioration of working capital) of at least \$3,000,000.

(i) No Cessation of Financing Market. There shall have not been occurred and be continuing on the Effective Date any general banking moratorium or any practical cessation in the bank or private debt financing markets, and there shall not have been introduced any material governmental restrictions imposed on lending institutions, which materially affect the type of lending transactions contemplated by this Agreement.

(j) Execution and Delivery of Documentation. The Borrower and any other Credit Party which is a party to any Loan Document or other document delivered pursuant thereto shall have duly authorized, executed and delivered all documents, including Loan Documents, required hereunder, all in form and substance satisfactory to the Agent, acting reasonably, and all of the Security Documents shall have been registered in all offices in which, in the opinion of the Agent or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby. The Agent shall have received and be satisfied with the results of all personal property, bankruptcy, execution and other searches conducted by the Agent and its counsel with respect to the Borrower and any other Credit Party in all jurisdictions selected by the Agent and its counsel. The Agent shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor agreements as the Agent may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, in the Permitted Discretion of the Agent, have implemented Availability Reserves in connection therewith.

(k) Security Documents. The Agent shall have received:

- (i) a guarantee executed by each Borrower and each other Credit Party in favour of the Agent, as agent for the Lenders, dated as of the Effective Date;
- (ii) a general security agreement (and a movable hypothec with respect to any personal property located in the Province of Quebec) executed by each Credit Party in favour of the Agent, as agent for the Lenders, dated as of the Effective Date, constituting a first-priority Lien on all property from time to time of each Credit Party, subject to no Liens except Permitted Liens; and
- (iii) security under Section 427 of the *Bank Act* (Canada), executed by the Borrower in favour of each Lender qualified to hold such security, in each case in respect of any amounts owing by the Borrower to such Lender,

provided that if any of the foregoing documents are not suitable for use in any jurisdiction, the applicable Credit Party shall execute any documents the Agent shall prepare and request be executed containing substantially equivalent substantive effect and which are suitable for use in such jurisdiction.

(l) Regulatory Approval; Consents; Waivers. The Agent and the Lenders shall be satisfied, acting reasonably, that all material Authorizations required in connection with the Transactions contemplated hereby have been obtained and are in full force and effect (including all approvals listed in Schedule 3.3), and that all consents and waivers required to consummate the Transactions have been obtained, to the extent that consummation of the Transactions would otherwise be restricted or prohibited under the terms of any Material Contract to which the Borrower or any other Credit Party is a party, or by which it is bound, in each case without the imposition of any burdensome provisions which could reasonably be expected to have a Material Adverse Effect.

(m) Delivery of Financial Statements. The Agent and the Lenders shall have received and be satisfied with (i) the financial statements described in Section 3.4(a) and unaudited consolidated balance sheets of the Borrower and its Subsidiaries (*pro forma* as of the Effective

Date), (ii) the projected consolidated income statement, balance sheet, and statement of cash flows of the Borrower and its Subsidiaries setting forth in reasonable detail and on a monthly basis the projected revenues and expenses (including Capital Expenditures) of the Borrower and its Subsidiaries for Fiscal Years 2015 and 2016, and (iii) the Borrower monthly forecast model (consolidated for the acquisition of the Jones New York Canada Assets) including same store profitability and the assumptions underpinning such model.

(n) No Material Adverse Change. The Agent and the Lenders shall be satisfied that, since January 31, 2015 there has not been a Material Adverse Change.

(o) Indebtedness. The Transactions contemplated in this Agreement and the other Loan Documents shall not have caused any event or condition to occur which has resulted, or which will result, in any Material Indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time, or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or which will result in the creation of any Liens under any Indebtedness.

(p) Blocked Account/Cash Management Systems. The Agent shall have received evidence satisfactory to the Agent that, as of the Effective Date, blocked account and cash management systems complying with Section 2.17 have been established and are currently being maintained in the manner set forth in such Section 2.17, and the Agent shall have received copies of duly executed tri-party Blocked Account Agreements and other control agreements satisfactory to the Agent, acting reasonably, with the banks and other Persons as required by Section 2.17.

(q) Material Contracts. The Agent and the Lenders shall be satisfied with the terms and conditions of each of the Material Contracts.²

(r) Cancellation of Existing Credit Lines. The Agent shall have received one or more pay off letters, in form and substance satisfactory to the Agent, confirming that the Credit Parties shall have repaid (or contemporaneously with the initial advance of Revolving Loans hereunder will have repaid) all amounts outstanding under their existing credit lines, and that all such existing credit lines shall have been cancelled permanently, except with respect to Permitted Indebtedness.

(s) Capitalization Arrangement. The Lenders shall be satisfied with the capital structure of the Borrower, that the Credit Parties are solvent, and that the Credit Parties have sufficient working capital to pay their debts as they become due.

(t) Background Checks. The Agent shall have received and be satisfied with the results of the background checks conducted on the key senior management and principals of the Credit Parties.

(u) Judgments/Litigation. The Agent shall be satisfied that there are no judgments outstanding, and no legal or administrative proceedings (including in any court arbitrator or any Governmental Authority) pending or threatened except as expressly permitted hereunder which could reasonably be expected to give rise to a Material Adverse Effect.

(v) "Know Your Customer" Information. The Agent and the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable

² NTD: Schedule of material contracts to include, *amongst others* (i) Jones New York Canada asset purchase agreement and (ii) licensing agreements with Authentic Brands Group.

"know your customer" and anti-money laundering rules and regulations, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

(w) Other Documentation; Credit Approvals; Diligence. The Agent and the Lenders shall have received (i) the information Certificate executed by each Credit Party in favour of the Agent and dated as of the Effective Date, (ii) such other documents and instruments as are customary for transactions of this type or as they may reasonably request, and (iii) their final credit approvals. The Agent and the Lenders shall have completed, to their satisfaction, and with satisfactory results, all business due diligence in respect of each Credit Party.

The conditions set forth in Section 4.1 are for the exclusive benefit of the Lenders, and may be waived by the Lenders in accordance with Section 9.2 at any time and from time to time, with or without further conditions.

4.2 Each Credit Event.

The obligations of the Lenders to make any Loan or to permit the issuance of any Letter of Credit or to permit the Credit Parties to obtain any F/X Contract (including the initial Borrowing hereunder) shall be conditional upon each of the following conditions being satisfied (or waived in accordance with Section 9.2):

(a) the representations and warranties of the Borrower set forth in this Agreement shall be true and correct in all material respects (or, in the case of any representations and warranties *qualified by materiality or Material Adverse Effect, in all respects*) on and as of the date of each such Borrowing (including the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable) as if made on such date (except where such representation or warranty refers to a different date);

(b) at the time of and immediately after giving effect to such Borrowing (including the issuance, amendment, renewal or extension of such Letter of Credit, as applicable), no Default shall have occurred and be continuing;

(c) the Agent shall have received a Borrowing Request (except in respect of an F/X Contract) in the manner and within the time period required by Section 2.3; and

(d) except as may be otherwise agreed to from time to time by the Agent and the Borrower in writing, after giving effect to the extension of credit requested to be made by the Borrower on such date, the aggregate Exposure will not exceed the lesser of (i) the Commitments, or (ii) an amount equal to the Borrowing Base.

Each Borrowing, including each issuance, amendment, renewal or extension of a Letter of Credit, shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the accuracy of the matters specified in paragraphs (a) and (b) above. This requirement does not apply on the conversion or rollover of an existing Borrowing provided that the aggregate outstanding Borrowings will not be increased as a consequence thereof.

ARTICLE 5 AFFIRMATIVE COVENANTS

From (and including) the Effective Date until the Termination Date, the Borrower and each other Credit Party covenants and agrees with the Lenders that:

5.1 Financial Statements and Other Information.

The Borrower will furnish to the Agent and each Lender:

(a) as soon as available and in any event within 120 days after the end of each Fiscal Year of Grafton-Fraser (within 180 days for the Fiscal Year ended January 30, 2016, provided that draft financial statements are provided to each Lender within 120 days of such Fiscal Year end), Grafton-Fraser's audited consolidated balance sheet and related statements of income, retained earnings and changes in financial position as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by KPMG LLP or other independent auditors of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Grafton-Fraser and its Subsidiaries on a consolidated basis in accordance with GAAP;

(b) as soon as available and in any event within 30 days after the end of each Fiscal Month, the unaudited consolidated balance sheet and related statements of income, retained earnings and changes in financial position of Grafton-Fraser and its Subsidiaries as of the end of such month and the then elapsed portion of the Fiscal Year which includes such Fiscal Month, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of Grafton-Fraser and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of notes;

(c) concurrently with the financial statements required pursuant to Sections 5.1(a) and (b) above, a certificate of the Borrower, signed by a Responsible Officer in the form of Exhibit E;

(d) copies of each management letter issued to the Borrower by its auditors promptly following consideration or review thereof by the Board of Directors of the Borrower, or any committee thereof (together with any response thereto prepared by the Borrower);

(e) promptly upon the request of the Agent, and in any event no less frequently than the eleventh Business Day of each Fiscal Month, (together with a copy of all or any part of the following reports requested by any Lender in writing after the Effective Date), a Borrowing Base Report, as of the last day of the immediately preceding Fiscal Month that reflects the Accounts as at the last business day of such month, together with a report of Priority Payables as at such date, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion including:

- (i) an aging of Credit Card and Debit Card Accounts Receivable (including both summary and detail format) showing Accounts outstanding, aged from the date of sale as follows: 1 to 5 days past due and 6 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion, including the ledger for disputed/legal accounts;
- (ii) a calculation of the Credit Card and Debit Card Accounts Receivable which would not meet the criteria of an Eligible Credit Card and Debit Card Account Receivable;

- (iii) a copy of the internally generated month end cash receipts and collections journal;
 - (iv) Borrower prepared reconciliation of the cash receipts journal to the blocked depository account;
 - (v) a detailed, monthly, Inventory listing of the Borrower and each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;
 - (vi) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory;
 - (vii) detailed monthly accounts payable aging;
 - (viii) an aged listing of the ten largest accounts payable for the month;
 - (ix) written confirmation that all basic rent payments then due and payable under each lease of real property (under which a Credit Party is a tenant) have been paid; and
 - (x) written confirmation that all royalty payments then due and payable under all licensing agreements have been paid.
- (f) at all times during a Weekly Reporting Trigger Period, weekly, on the third Business Day of each week for the prior week:
- (i) a weekly Borrowing Base Report that reflects the Accounts as at the last Business Day of the previous week together with a report of Priority Payables as at such date;
 - (ii) an aging of Credit Card and Debit Card Accounts Receivable (including both summary and detail format) showing Accounts outstanding, aged from the date of sale as follows: 1 to 5 days past due and 6 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion, including the ledger for disputed/legal accounts;
 - (iii) a calculation of the Credit Card and Debit Card Accounts Receivable which would not meet the criteria of an Eligible Credit Card and Debit Card Account Receivable;
 - (iv) a detailed, weekly, inventory listing of each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;

- (v) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory; and
 - (vi) a copy of the internally generated weekly cash receipts and collections journal.
- (g) monthly within 30 days of the last day of each Fiscal Month:
- (i) a copy of the internally generated general ledger report as at the month end;
 - (ii) a reconciliation of Accounts aging to the general ledger and to the financial statement as at the month end;
 - (iii) a reconciliation of the monthly inventory perpetual listing to the general ledger and to the financial statement as at the month end; and
 - (iv) promptly upon receipt thereof, copies of all material correspondence, actuarial valuation reports and other filings with any pension regulators or the applicable Governmental Entity to which such correspondence, reports and filings must be sent (including any filings furnished to the trustee under any Pension Plan and any valuation reports prepared by the Borrower's actuary and confirming that all contributions to be made in respect of the Pension Plans have been made when due).
- (h) such other reports designating, identifying and describing the Accounts and Inventory as required by the Agent and on a more frequent basis as the Agent may reasonably request in its Permitted Discretion;
- (i) the results of each physical verification, if any, that the Borrower may have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory, within 10 Business Days of completion of any such physical verification (and, if a Default or an Event of Default has occurred and be continuing, the Borrower shall, upon the request of the Agent, conduct, and deliver the results of, such physical verifications as the Agent may reasonably require);
- (j) such appraisals of the inventory of the Borrower and the Credit Parties as the Agent may, in its Permitted Discretion, request at any time, such appraisals to be conducted at the expense of the Borrower by an appraiser that is acceptable to the Agent, and shall be in scope, form and substance acceptable to the Agent; provided that the Borrower shall be responsible for the expenses of only two (2) such appraisals in any Fiscal Year unless an Event of Default has occurred and is continuing, in which case the Borrower will be liable for the expenses of any further appraisals required by the Agent in its Permitted Discretion;
- (k) promptly after the Borrower learns of the receipt or occurrence of any of the following, a certificate of such Borrower, signed by a Responsible Officer, specifying (i) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority pertaining to all or any part of the properties of the Borrower or any other Credit Party which could reasonably be expected to have a Material Adverse Effect, (ii) any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (iii) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of the Borrower or any other Credit Party in an amount in excess of \$500,000 with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the

claimed default and what action the Borrower or the relevant Subsidiary is taking or proposes to take with respect thereto, (iv) any default or non-compliance of any party to any of the Loan Documents with any of the terms and conditions thereof or any notice of termination or other proceedings or actions which could reasonably be expected to adversely affect any of the Loan Documents, (v) the creation, dissolution, amalgamation, merger or acquisition of any Subsidiary of the Borrower, (vi) any event or condition not previously disclosed to the Agent, which violates any Environmental Law and which could reasonably be expected, in the Borrower's reasonable judgment, have a Material Adverse Effect, (vii) any execution of a Material Contract not listed on Schedule 3.18 on the date hereof (and attaching a fully executed and compiled copy of any such Material Contract), material amendment to, termination of, or material default under a Material Contract or any execution of, or material amendment to, termination of, or material default under, any material collective bargaining agreement, (viii) the threatened termination or cancellation of, or any material adverse modification or change in the business relationship of any Credit Party with any supplier material to its operations, (ix) the opening or maintaining by the Credit Parties of any bank account not listed on Schedule 3.26 on the date hereof, and (x) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;

(l) promptly after the occurrence thereof, notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against the Borrower or any other Credit Party or any of its or their Subsidiaries or any material property of any thereof which could reasonably be expected to have a Material Adverse Effect;

(m) promptly after the filing thereof with any Governmental Authority (if requested by the Agent), copies of each annual and other report (including applicable schedules and actuarial reports) with respect to each Pension Plan of the Borrower or any other Credit Party or any trust created thereunder;

(n) at the cost of the Borrower, a report or reports of an independent collateral field examiner (which collateral field examiner may be the Agent or an Affiliate thereof) approved (i) by the Borrower, whose approval shall not be unreasonably withheld, and (ii) by the Agent with respect to the Eligible Credit Card and Debit Card Account Receivable and Eligible Inventory components included in the Borrowing Base. The Agent may (and, at the direction of the Required Lenders, shall) request such reports or additional reports as it (or the Required Lenders) shall reasonably deem necessary. If no Event of Default has occurred during a Fiscal Year, then the Borrower will only be liable for the expense of two (2) field examination during such Fiscal Year; however if an Event of Default has occurred and is continuing, then the Borrower will be liable for the expenses of all further field examinations required by the Agent in its Permitted Discretion;

(o) upon request by the Agent, a summary of the insurance coverages of the Borrower and any other Credit Party, in form and substance reasonably satisfactory to the Agent, and upon renewal of any insurance policy, a copy of an insurance certificate summarizing the terms of such policy, and upon request by the Agent, copies of the applicable policies;

(p) on or before the earlier of the 10th day after approval by the Board of Directors of the Borrower and the 30th day before each Fiscal Year end, an annual budget of the Borrower and the other Credit Parties on a consolidated basis, approved by the Board of Directors of the Borrower, setting forth in reasonable detail and on a monthly basis the projected revenues and expenses (including capital expenditures) of the Borrower for the following Fiscal Year, it being recognized by the Lenders that projections as to future results are not to be viewed as fact and that the actual results for the period or periods covered by such projections may differ from the projected results;

(q) concurrently with any delivery of financial statements under Section 5.1 (a) or (b) above, a certificate of a Responsible Officer of the Borrower (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.1(a) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, (ii) identifying all its Subsidiaries existing on the date of such certificate and indicating, for each such Subsidiary, and whether such Subsidiary is a Guarantor and whether such Subsidiary was formed or acquired since the end of the previous Fiscal Month, (iii) identifying any parcels of real property or improvements thereto that have been acquired or leased by any Credit Party since the end of the previous Fiscal Month, and (iv) identifying any Permitted Acquisitions that have been completed since the end of the previous Fiscal Month, including the date on which each such Permitted Acquisition was completed and the consideration therefor; and

(r) upon the request of the Agent, a report as to the status of the negotiations regarding any Refinancing of the Permitted Term Debt, and containing the projected timeline of same.

5.2 Existence; Conduct of Business.

Each Credit Party will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (subject only to Section 6.3), and obtain, preserve, renew and keep in full force and effect any and all rights, licenses, permits, privileges and franchises material to the conduct of its business.

5.3 Payment of Obligations.

Each Credit Party will pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such other Credit Party has set aside on its books adequate reserves with respect thereto to the extent required in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.4 Maintenance of Properties.

Each Credit Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.5 Books and Records; Inspection Rights.

Each Credit Party will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Credit Party will permit any representatives designated by the Agent, upon reasonable prior notice during normal office hours, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

5.6 Compliance with Applicable Laws and Material Contracts.

Each Credit Party will comply with all Applicable Laws and orders of any Governmental Authority applicable to it or its property and with all of its Material Contracts, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Credit Party shall modify, amend or alter its certificate or articles of

incorporation, save to the extent the Lenders are not materially prejudiced thereby and except as permitted by Section 6.3.

5.7 Use of Proceeds and Letters of Credit.

The proceeds of the Revolving Loans will be used to refinance the Borrower's Existing Senior Credit Facility, repayments of up to a maximum aggregate amount of \$4,000,000 in accordance with Section 6.8(d), and for working capital and other general corporate purposes of the Borrower. Letters of Credit will be issued only to support the ordinary course business activities of the Borrower or any other Credit Party.

5.8 Further Assurances.

Each Credit Party will, upon request by the Agent, cure promptly any defects in the execution and delivery of the Loan Documents, including this Agreement. Upon request by the Agent, each Credit Party will, at its expense, as promptly as practical, execute and deliver to the Agent, all such other and further documents, agreements and instruments in compliance with or performance of the covenants and agreements of the Borrower or any other Credit Party in any of the Loan Documents, including this Agreement, or to further evidence and more fully describe the Collateral, or to correct any omissions in any of the Loan Documents, or more fully to state the security obligations set out herein or in any of the Loan Documents, or to perfect, protect or preserve any Liens created pursuant to any of the Loan Documents, or to make any recordings, to file any notices, or obtain any consents, all as may be necessary or appropriate in connection therewith, in the judgment of the Agent, acting reasonably.

5.9 Insurance.

Each Credit Party shall maintain insurance on its property and assets under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times customary for its industry and locations. All such policies are, subject to the rights of any holders of Permitted Liens holding claims senior to the Agent, to be made payable to the Agent, to the extent required herein, in case of loss, under a standard non contributory "mortgagee", "lender" or "secured party" clause and are to contain such other provisions as the Agent may reasonably require to fully protect the Agent's interest in the property and assets subject to the Liens in favour of the Agent and to any payments to be made under such policies. All original policies (or true copies thereof) which relate to Collateral are to be delivered to the Agent, with the loss payable endorsement in the Agent's favour, and shall provide for not less than thirty (30) days (or such lesser period as required by the insurer or statute) prior written notice to the Agent of the exercise of any right of cancellation. Upon the occurrence and continuance of an Event of Default which is not waived in writing by the Agent, the Agent shall, subject to the rights of any holders of Permitted Liens holding claims senior to the Agent, have the sole right, in the name of the Agent, the Borrower or any other applicable Credit Party, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is less than or equal to \$500,000, such insurance proceeds shall be paid to the Borrower. Notwithstanding the foregoing, to the extent such insurance proceeds are received by the Agent, the Agent shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the applicable Credit Party. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is greater than \$500,000, such insurance proceeds shall be paid to the Borrower, and the Borrower may irrevocably elect (by delivering written notice to the Agent) to

replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty as set forth herein. If such election is not made by the Borrower, Insurance proceeds shall be used by the Borrower to repay outstanding Revolving Loans. Notwithstanding the foregoing, to the extent that such insurance proceeds are received by the Agent, the Agent shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the Borrower to be applied in accordance with this Section 5.9. If the Borrower does not, or cannot, elect to use the insurance proceeds as set forth above, or if the Agent in its reasonable discretion believes that the applicable Credit Party will not be able to timely replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty, the Agent may, subject to the rights of any holders of Permitted Liens holding claims senior to the Agent in respect of such insurance proceeds, (i) if no Event of Default has occurred and is continuing, apply the insurance proceeds to the payment of any Revolving Loans until paid in full and remit any balance to the Borrower and (b) if an Event of Default has occurred and is continuing, apply the insurance proceeds to the Obligations in such manner and in such order as the Agent may reasonably elect. Upon the occurrence and during the continuance of an Event of Default, all insurance proceeds in respect of any Collateral shall be paid to the Agent. The Agent may apply such insurance proceeds to the Obligations in such manner as it may deem advisable in its sole discretion. In the event the Borrower fails to provide the Agent with timely evidence, acceptable to the Agent, of the maintenance of insurance coverage required pursuant to this Section 5.9, or in the event that any Credit Party fails to maintain such insurance, the Agent may purchase or otherwise arrange for such insurance, but at the Borrower's expense and without any responsibility on the Agent's part for: (i) obtaining the insurance; (ii) the solvency of the insurance companies; (iii) the adequacy of the coverage; or (iv) the collection of claims. The insurance acquired by the Agent may, but need not, protect the Borrower's or any other Credit Party's interest in the Collateral, and therefore such insurance may not pay claims which the Borrower may have with respect to the Collateral or pay any claim which may be made against the Borrower in connection with the Collateral. In the event the Agent purchases, obtains or acquires insurance covering all or any portion of the Collateral, the Borrower shall be responsible for all of the applicable costs of such insurance, including premiums, interest (at the applicable interest rate for Revolving Loans set forth in Section 2.5), fees and any other charges with respect thereto, until the effective date of the cancellation or the expiration of such insurance. The Agent may charge all of such premiums, fees, costs, interest and other charges to the Borrower's loan account. The Borrower hereby acknowledges that the costs of the premiums of any insurance acquired by the Agent may exceed the costs of insurance which the Borrower may be able to purchase on its own. In the event that the Agent purchases such insurance, the Agent will promptly, and in any event within fifteen (15) days, notify the Borrower of said purchase.

5.10 Operation and Maintenance of Property.

Each Credit Party will manage and operate its business or cause its business to be managed and operated (i) in accordance with prudent industry practice in all material respects and in compliance in all material respects with the terms and provisions of all applicable licenses, leases, contracts and agreements, and (ii) in compliance with all Applicable Laws of the jurisdiction in which such businesses are carried on, and all Applicable Laws of every other Governmental Authority from time to time constituted to regulate the ownership, management and operation of such businesses, except where a failure to so manage and operate would not have a Material Adverse Effect.

5.11 Additional Subsidiaries; Additional Liens.

if, at any time on or after the Effective Date, the Borrower or any other Credit Party creates or acquires an additional Subsidiary or in some other fashion becomes the holder of any Equity Securities of a new Subsidiary, then to the extent permitted by Applicable Law, the Borrower and the other Credit Parties will cause such new Subsidiary to immediately execute and deliver to the Agent

a guarantee, and security agreements, hypothecs and other security-related documents covering such new Subsidiary's Inventory, Accounts and other Collateral, all in form and substance satisfactory to the Agent, acting reasonably. In addition, if at any time on or after the Effective Date, the Borrower or any other Credit Party has Inventory, Accounts or other Collateral located in any jurisdiction in which the Agent does not hold duly perfected security in respect of the inventory, Accounts or other Collateral of such Credit Party in such jurisdiction, the applicable Credit Party shall give notice to the Agent of those facts. If the Agent, acting reasonably, determines that it is practical to perfect security in such jurisdiction, the applicable Credit Party shall promptly execute all such security agreements, hypothecs and other security-related documents covering such Credit Party's Inventory, Accounts or other Collateral in such jurisdiction, all in form and substance satisfactory to the Agent, acting reasonably, and shall take all such action as may reasonably be required to ensure that the Liens in favour of the Agent in respect of the inventory, Accounts or other Collateral of such Credit Party located in such jurisdiction are duly perfected. In connection with the execution and delivery of any guarantee, security agreement, intellectual property security agreements, hypothecs or related document pursuant to this Section, the Borrower and each other Credit Party will cause to be delivered to the Agent such corporate resolutions, certificates, legal opinions and such other related documents and registrations as shall be reasonably requested by the Agent and consistent with the relevant forms and types thereof delivered on the Effective Date or as shall be otherwise reasonably acceptable to the Agent. Each guarantee, security agreement, intellectual property security agreements, hypothecs and other agreements delivered pursuant to this Section shall be deemed to be a Security Document from and after the date of execution thereof. For greater certainty, the Credit Parties acknowledge that, to the extent that Collateral is located in a jurisdiction in which the Agent does not hold duly perfected security in such Collateral In such jurisdiction, such Collateral is not eligible for inclusion in the Borrowing Base.

5.12 Fixed Charge Coverage Ratio.

The Borrower will, at all times after the day that Excess Availability in any month (other than January of each year) is less than ten percent (10%) of the Borrowing Base, maintain a Fixed Charge Coverage Ratio of not less than 1.00:1.00. The Borrower's compliance with this Section 5.12 shall be tested monthly and calculated over a Rolling Period.

5.13 Intentionally Deleted.

5.14 Post-Closing Undertakings.

Notwithstanding the provisions of Sections 2.17 and 4.1(p), the Borrower shall ensure that all post-closing undertakings as set forth in Schedule 5.14 (collectively, the "Undertakings") have been satisfied within the time periods set forth therein and any failure to satisfy any of the Undertakings within the applicable time periods shall constitute an Event of Default.

5.15 Environmental Laws.

Each of the Borrower and the other Credit Parties will conduct its business in compliance with all Environmental Laws applicable to it or them, including those relating to the Credit Parties' generation, handling, use, storage and disposal of Hazardous Materials, save for non-compliance which could not reasonably be expected to have a Material Adverse Effect. Each of the Borrower and the other Credit Parties will take prompt and appropriate action to respond to any material non-compliance or alleged material non-compliance with Environmental Laws, and the Borrower shall regularly report to the Agent on such response. Without limiting the generality of the foregoing, whenever any Credit Party gives notice to the Agent pursuant to Section 5.1(l)(vi) and the Agent so requests, the Credit Parties shall, at the applicable Credit Party's expense:

(a) cause an independent environmental engineer acceptable to the Agent in its reasonable discretion to conduct such tests of the site where the non-compliance or alleged non-compliance with Environmental Laws has occurred, and prepare and deliver to the Agent a report setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof;

(b) provide to the Agent a supplemental report of such engineer whenever the scope of the environmental problem, or the Credit Party's, and any other Person's response thereto or the estimated costs thereof, shall change. Such reports shall also be addressed to the Agent and the Lenders and shall, as requested by the Agent, set out the results of such engineers' review of, among other things:

- (i) the internal policies and procedures of the Credit Parties relating to environmental regulatory compliance to ensure that all appropriate steps are being taken by or on behalf of the Credit Parties to comply in all material respects with all applicable requirements of Environmental Laws;
- (ii) the progress of compliance satisfaction, capital expenditures required to effect remedial steps and compliance deficiencies;
- (iii) all other environmental audit reports which the Credit Parties or any predecessor has commissioned in the normal conduct of its business which relate to the subject matter of such notice; and
- (iv) all environmental reports which have been commissioned by or made available to a Credit Party in connection with new acquisitions, and the engineers' report and recommendations on results of tests performed or samples taken by it during the course of its review, irregularities or steps which may be taken to ensure continued compliance, as well as such other matters as the Borrower and/or the Agent may reasonably request from time to time.

5.16 Intentionally Deleted.

5.17 Intentionally Deleted.

5.18 Pension Plans.

Each Credit Party will administer its Pension Plans in accordance with the requirements of the applicable pension plan texts, funding agreements, any other documents governing the Pension Plans, the iTA and applicable federal or provincial pension benefits legislation except for any non-compliance which would not reasonably be expected to have a Material Adverse Effect. Each Credit Party shall, and shall cause its Subsidiaries to, promptly provide the Agent with any documentation relating to any of the Pension Plans as the Agent may reasonably request. Each Credit Party shall, and shall cause its Subsidiaries to, notify the Agent within thirty (30) days of: (i) a material increase in the obligations, liabilities and indebtedness of any of the Pension Plans; and (ii) commencing payment of contributions to a Pension Plan to which a Credit Party had not previously been contributing.

5.19 Collateral Monitoring and Review.

Upon the request of the Agent, after reasonable notice and during normal business hours, the Borrower will permit the Agent or professionals (including, consultants, accountants, and/or

appraisers) retained by the Agent to conduct appraisals, commercial finance examinations and other evaluations, including, of (i) the Credit Parties' practices in the computation of the Borrowing Base, and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. In connection with any inventory appraisal and commercial finance examination relating to the computation of the Borrowing Base, the Borrower shall make such adjustments to the calculation of the Borrowing Base as the Agent shall reasonably require based upon the terms of this Agreement and the results of such inventory appraisal and commercial finance examination. Any inventory appraisal or commercial finance examination requested by the Agent shall be scheduled at such time as the Agent, in consultation with the Borrower, may agree in order to minimize any disruption to the conduct of the Borrower's business.

5.20 Physical Inventories.

The Borrower will cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Credit Parties, in each case consistent with past practices (but in no event less frequently than one physical inventory per Fiscal Year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Credit Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Credit Party. The Credit Parties, within five (5) days following the completion of any such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Credit Party) and shall post such results to the Credit Parties' stock ledgers and general ledgers, as applicable.

5.21 Application under the CCAA.

The Borrower acknowledges that its business and financial relationships with the Agent and the Lenders are unique from its relationship with any other of its creditors. The Borrower agrees that it shall not file any plan of arrangement under the *Companies' Creditors Arrangement Act* (the "CCAA Plan") which provides for, or would permit, directly or indirectly, the Agent or the Lenders to be classified in the same class with any other creditor of the Credit Parties for purposes of such CCAA Plan.

5.22 Special Provisions Regarding Accounts, Inventory and Other Collateral.

(a) Each Credit Party hereby represents and warrants, with respect to its Accounts, that: (i) each existing Account represents or results from, and each future Account will represent or result from, a bona fide sale or lease and delivery of goods by such Credit Party, or rendition of services by such Credit Party, in the ordinary course of such Credit Party's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account debtor thereon on the terms set forth in the invoice (or other document or record setting forth same) therefor or in the schedule thereof delivered to the Agent, without any material offset, deduction, defence or counterclaim except those known to such Credit Party and disclosed to the Agent; (iii) no payment will be received with respect to any Account of a Credit Party, and no credit, discount or extension or agreement therefor will be granted on any Account of a Credit Party, except as reported in Borrowing Base Reports delivered hereunder or otherwise reported by the Borrower to the Agent pursuant to the terms hereof; (iv) each copy of an invoice or other documents delivered to the Agent by the Borrower will be a genuine copy of the original invoice or document sent to the Account debtor named therein; and (v) all goods described in any invoice representing a sale of goods will have been delivered to the Account debtor and all services of a Credit Party described in each invoice will have been performed.

(b) The Credit Parties shall not extend or modify any Account (other than extensions and modifications made in the ordinary course of business). If, at any time, a Credit Party becomes aware of any matter adversely affecting the collectability in any material respect of any of its Accounts or the Account debtor therefor involving an amount greater than \$100,000, including a dispute or claim, or Information regarding the Account debtor's creditworthiness, the Borrower will promptly advise the Agent of the same.

(c) The Credit Parties shall not accept any note or other instrument (except a cheque or other instrument for the immediate payment of money) with respect to any of its Eligible Credit Card and Debit Card Account Receivable, without the Agent's prior written consent. If the Agent consents to the acceptance of any such instrument, it shall be considered as evidence of the applicable Account and not payment thereof and such Credit Party will promptly deliver such instrument to the Agent, endorsed by such Credit Party to the Agent in a manner reasonably satisfactory in form and substance to the Agent.

(d) No discount, credit or allowance shall be granted to any Account debtor without the Agent's prior written consent, except for discounts, credits and allowances made or given in the ordinary course of a Credit Party's business when no Event of Default exists. The Borrower shall revise any subsequent Borrowing Base Report to reflect the adjusted amount of any such Account recorded therein and so adjust it.

(e) Each Credit Party represents and warrants to the Agent and agrees with the Agent that all of the Inventory owned by the Credit Parties is and will be held for sale or lease, or to be furnished in connection with the rendition of services, in the ordinary course of the Credit Parties' business, and is and will be fit for such purposes in all material respects, subject to the next sentence. Each Credit Party will keep its Inventory in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Credit Party's business. The Credit Parties will not, without the prior written consent of the Agent, acquire or accept any Inventory on consignment or approval other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Agent, the Borrower will provide the Agent with the details of any such arrangements. Each Credit Party will maintain a perpetual inventory reporting system at all times. The Credit Parties will not, without the Agent's written consent, sell any of their Inventory on a sale on approval, consignment or other repurchase or return basis other than in the ordinary course of business in a manner consistent with past practices and, upon the reasonable request of the Agent, the Borrower will provide the Agent with the details of any such arrangements.

(f) In connection with all Inventory of a Credit Party financed by Letters of Credit, the Borrower will, at the Agent's request made after the occurrence and during the continuance of an Event of Default, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, cheques, Inventory, documents or instruments of such Credit Party on which the Agent holds a Lien to deliver them to the Agent and/or subject to the Agent's order, and if they shall come into such Credit Party's possession, to deliver them, upon request, to the Agent in their original form. Each Credit Party shall also, at the Agent's request made after the occurrence and during the continuance of an Event of Default, designate the Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents of such Credit Party.

(g) The Agent may, in its sole discretion, pay any amount or do any act required of any Credit Party hereunder or under any other Loan Document or requested by the Agent to preserve, protect, maintain or, upon the occurrence of an Event of Default which is continuing and exercise by the Agent of its rights under Section 7.2 hereof, enforce the Obligations, the Collateral or the Agent's Liens, and which the Credit Party fails to pay or do, including, without limitation, while an Event of Default is continuing, payment of any judgment against the Credit Party any insurance premium, any

warehouse charge, any finishing or processing charge, any landlord's or processor's claim, and any other Lien upon or with respect to the Collateral. All payments that the Agent makes under this Section and all reasonable out-of-pocket costs and expenses that the Agent pays or incurs in connection with any action taken hereunder shall be charged to the Borrower's loan account as a Revolving Loan. Any payment made or other action taken by the Agent under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

(h) Each Credit Party hereby constitutes the Agent, or any person, agent or mandatary the Agent may designate, as its attorney-in-fact, at the Borrower's cost and expense to, upon the occurrence of an Event of Default which is continuing, exercise all of the following powers, which being coupled with an interest, shall be irrevocable until the Termination Date:

(1) to receive, take, endorse, sign, assign and deliver, all in the name of the Agent or any Credit Party, as the case may be, any and all cheques, notes, drafts, and other documents or instruments relating to the Collateral, provided, however, that the Agent shall have the powers set out in this SubSection (1) at all times with or without the occurrence or continuance of an Event of Default;

(2) to, notwithstanding the foregoing, at the Agent's discretion, request from customers indebted on Accounts at any time, in the name of any Credit Party, information concerning the amounts owing on the Accounts;

(3) to transmit to customers indebted on Accounts notice of the Agent's interest therein and to notify customers indebted on Accounts to make payment directly to the Agent for the requisite Credit Party's account;

(4) to take or bring, in the name of the Agent or any Credit Party, as the case may be, all steps, actions, suits or proceedings deemed by the Agent necessary or desirable to enforce or effect collection of the Accounts; and

(5) to receive, open and dispose of all mail addressed to a Credit Party and to notify the postal authority of any change of address for delivery thereof to such address as the Agent may designate.

(i) Such Credit Party assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Agent to take any steps to perfect the Agent's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Credit Party from any of the Obligations. Following the occurrence and during the continuation of an Event of Default, the Agent may (but shall not be required to), without notice to or consent from any Credit Party, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Credit Party for the Obligations or under this Agreement or any other agreement now or hereafter existing between the Agent and any Credit Party.

ARTICLE 6
NEGATIVE COVENANTS

From (and including) the Effective Date until the Termination Date, the Borrower and each other Credit Party covenants and agrees with the Lenders that:

6.1 Indebtedness.

No Credit Party will create, incur, assume or permit to exist any Indebtedness, except:

- (a) any Indebtedness created hereunder;
- (b) any Indebtedness existing on the date hereof and set forth in Schedule 6.1 (including, any extensions, renewals or Refinancing of any such Indebtedness;
- (c) any Indebtedness of one Credit Party to another Credit Party;
- (d) any Guarantee by a Credit Party of Indebtedness of any other Credit Party which is permitted hereunder;
- (e) any Indebtedness of the Credit Parties incurred under Purchase Money Liens or Capital Lease Obligations in an aggregate amount not exceeding \$3,000,000 for all Credit Parties;
- (f) any Indebtedness of any Person that becomes a Credit Party after the date hereof, provided that (i) such Indebtedness exists at the time such Person becomes a Credit Party and is not created in contemplation of or in connection with such Person becoming a Credit Party, and (ii) the aggregate principal amount of Indebtedness permitted by this clause (f) shall not exceed \$500,000 at any time outstanding;
- (g) any Indebtedness in respect of Letters of Credit;
- (h) any Indebtedness in respect of Swap Agreements with Lenders or unsecured Swap Agreements with Persons that are not Lenders in each case entered into in compliance with Section 6.5, provided that the aggregate notional amounts under all such Swap Agreements shall not exceed \$5,000,000;
- (i) the Permitted Term Debt;
- (j) unsecured (except for Permitted Liens) Indebtedness in respect of customer deposits, trade payables, utilities, prepaid goods and services and taxes not yet due and delinquent, the whole incurred in the ordinary course of business of the Credit Parties;
- (k) Cash Management Obligations; and
- (l) unsecured Indebtedness not otherwise specified in paragraphs (a) to (j) above in an aggregate outstanding amount not exceeding \$100,000.

6.2 Liens.

No Credit Party will, and no Credit Party will permit any Credit Party to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by any Credit

Party or assign or sell any income or revenues (including Accounts of the Credit Parties) or rights in respect of any thereof, except Permitted Liens.

6.3 Fundamental Changes: Asset Sales.

(a) No Credit Party will merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or any of the Equity Securities of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve without the prior written consent of the Agent, except that any Credit Party, other than Grafton-Fraser inc., may merge, consolidate or amalgamate with and into Grafton-Fraser inc. or any other Credit Party (each, a "**Business Combination**") so long as:

- (i) no Default has occurred and is continuing at such time nor would any result from such Business Combination;
- (ii) the successor resulting from the Business Combination (the "**Merged Credit Party**") possesses all the property, rights, privileges and franchises of each Credit Party to such Business Combination (each, a "**Merging Credit Party**") and assumes and is subject to all the obligations and liabilities of each such Merging Credit Party under each Loan Document to which such Merging Credit Party is party;
- (iii) the benefits of each Loan Document to which each Merging Credit Party is a party extend to the performance by the Merged Credit Party of its obligations under each Loan Document;
- (iv) neither the validity, enforceability and effect of the Loan Documents, nor the validity, effect, priority and perfection of the Security, nor the rights or interests of the Lender, shall be affected in any adverse way;
- (v) if any of the Merging Credit Parties is a Borrower, the Merged Credit Party shall continue as a Borrower; and
- (vi) the Merged Credit Party executes and delivers to the Lender such confirming documents as the Lender may reasonably require.

(b) No Credit Party will engage to any material extent in any material business other than businesses of the type conducted by the Credit Party on the date of execution of this Agreement and businesses reasonably related thereto.

(c) No Credit Party will make any sale, lease, license, transfer, assignment or other disposition of all or any portion of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one transaction or a series of transactions, other than (a) inventory sold in the ordinary course of business upon customary credit terms, (b) sales or dispositions of scrap or obsolete inventory, material or equipment, (c) sub-leases of head office premises, (d) sale of fixtures from any discontinued distribution centre, (e) leases of real property or personal property (under which such Person is lessor) which have a fair market value less than \$500,000 for any transaction and less than \$500,000 for all such transactions and which are no longer used or useful in the business, (f) sales or other dispositions of other assets not exceeding \$500,000 in any Fiscal Year, (g) disposals of contractual rights in the ordinary course of business, and (h) disposals of instruments on collections.

6.4 Investments, Loans, Advances, Guarantees and Acquisitions.

Each Credit Party will not purchase, hold or acquire (including pursuant to any amalgamation with any Person that was not a Credit Party prior to such amalgamation) any Equity Securities, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) the business undertaking and assets of any other Person or otherwise make an Acquisition, except:

- (a) Investments by a Credit Party in the Equity Securities of any other Credit Party;
- (b) loans or advances made by one Credit Party to any other Credit Party;
- (c) Guarantees constituting Permitted Indebtedness;
- (d) *Permitted Investments*; and
- (e) Permitted Acquisitions.

6.5 Swap Transactions.

No Credit Party will enter into any Swap Transaction or engage in any transactions in respect thereof, except (i) Swap Transactions entered into by the Borrower to hedge or mitigate risks to which the Borrower or any other Credit Party has actual exposure (other than those in respect of Equity Securities), (ii) Swap Transactions entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any other Credit Party, and (iii) F/X Contracts entered into pursuant to Section 2.19.

6.6 Restricted Payments.

No Credit Party will declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the Borrower may declare and pay dividends with respect to its Equity Securities payable solely in additional Equity Securities, (b) any Credit Party (other than the Borrower) may declare and pay dividends to the Borrower or any other Credit Party (other than the Borrower) and any Credit Party (other than the Borrower) may redeem or repurchase its own Equity Securities, and (c) the Borrower may make Restricted Payments pursuant to and in accordance with stock option plans, profit sharing plans and/or other benefit plans for management or employees of the Borrower and the other Credit Parties.

6.7 Transactions with Affiliates.

No Credit Party will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favourable to the Credit Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Credit Parties not involving any other Affiliate, and (c) any Restricted Payment permitted by Section 6.6. The foregoing restrictions shall not apply to: (i) the payment of reasonable and customary fees to directors of the Credit Party, (ii) any other transaction with any employee, officer or director of a Credit Party pursuant to employee profit sharing and/or benefit plans and compensation and non-competition arrangements in amounts customary for corporations similarly situated to the Credit Party and

entered into in the ordinary course of business and approved by the board of directors of the Credit Party, or (iii) any reimbursement of reasonable out-of-pocket costs incurred by a person referred to in clause (ii) or an Affiliate of the Credit Party on behalf of or for the account of the Credit Party.

6.8 Repayment of Debt.

No Credit Party will repay, prepay, redeem, repurchase, defease or otherwise make any payment on account of any Indebtedness for borrowed money except for (a) payment on account of Indebtedness owing to the Agent or the Lenders under this Agreement, (b) any payment consented to in writing by the Required Lenders, (c) payments of regularly scheduled interest of the Permitted Term Debt and payment on account of other Permitted Indebtedness, the repayment of which is not restricted by Section 6.6 or clause (e) hereof, (d) principal repayments of up to a maximum aggregate amount of \$4,000,000 of Permitted Term Debt, provided that (i) such repayments are made within one year of the Effective Date and (ii) evidence of each such repayment is provided to the Agent within 5 Business Days of same, and (e) repayments of principal in respect of third party debt obligations of the Credit Parties, including the Permitted Term Debt, provided that the Payment Conditions are satisfied.

6.9 Restrictive Agreements.

No Credit Party will directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, (b) the ability of a Credit Party to pay dividends or other distributions with respect to any Equity Securities or with respect to, or measured by, its profits or to make or repay loans or advances to the Borrower or any other Credit Party or to provide a Guarantee of any Indebtedness of the Borrower or any other Credit Party, (c) the ability of the Borrower or any other Credit Party to make any loan or advance to the Borrower or any of the other Credit Parties, or (d) the ability of the Borrower or any other Credit Party to sell, lease or transfer any of its property to the Borrower or any other Credit Party; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by this Agreement, (ii) the foregoing shall not apply to restrictions and condition existing on the date hereof identified on Schedule 6.9 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary of the Borrower pending such sale, provided such restrictions and conditions apply only to the Subsidiary of the Borrower that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other ordinary course contracts restricting the assignment thereof.

6.10 Capital Lease Obligations.

No Credit Party will create, incur, assume or suffer to exist, any Capital Lease Obligations, whether directly or as a guarantor, if, after giving effect thereto, the aggregate amount of all payments (for both principal and interest) required to be made by the Credit Parties on a consolidated basis pursuant to such Capital Lease Obligations would exceed \$500,000 in any Fiscal Year.

6.11 Sales and Leasebacks.

No Credit Party will enter into any arrangement, directly or indirectly, with any Person whereby the Credit Party shall sell or transfer any property, whether now owned or hereafter acquired, and whereby the Credit Party shall then or thereafter rent or lease as lessee such property or any part thereof or other property which the Credit Party intends to use for substantially the same purpose or purposes as the property sold or transferred.

6.12 Pension Plan Compliance.

No Credit Party will (a) terminate any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to have a Material Adverse Effect, (b) fail to make full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or Applicable Law, the Credit Party is required to pay as contributions thereto, except where the failure to make such payments could not reasonably be expected to have a Material Adverse Effect, (c) permit to exist any accumulated funding deficiency, whether or not waived, with respect to any Pension Plan, which could reasonably be expected to have a Material Adverse Effect, or (d) contribute to or assume an obligation to contribute to, or become liable under, any "multi-employer pension plan" as such term is defined in the *Pension Benefits Act* (Ontario) or other Applicable Law, or any Pension Plan not disclosed to the Agent, (e) acquire an interest in any Person if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to any Pension Plan; (f) permit, or allow any other Credit Party to permit, the actuarial present value of the benefit liabilities (computed on an accumulated benefit obligation basis in accordance with GAAP) under all Pension Plans in the aggregate to exceed the current value of the assets of all Pension Plans in the aggregate that are allocable to such benefit liabilities, in each case only to the extent such liabilities and assets relate to benefits to be paid to employees of the Credit Parties.

6.13 Sale or Discount of Receivables.

No Credit Party will discount or sell (with or without recourse) any of its Accounts.

6.14 Unconditional Purchase Obligations.

No Credit Party will enter into or be a party to, any Material Contract for the purchase of materials, supplies or other property or services, if such contract requires that payment be made by it regardless of whether or not delivery of such materials, supplies or other property or services is ever made, provided that this Section 6.14 shall not restrict the ability of any Credit Party to enter into any such contract in the ordinary course of its business to the extent that the materials, supplies or other property or services which are the subject matter of such contract are reasonably expected to be used by the applicable Credit Party in the ordinary course of its business.

6.15 Intentionally Deleted.

6.16 No Amendments to Material Contracts.

No Credit Party will amend, modify or terminate (or waive any provision of or provide any consent under), any Material Contract in a manner which may reasonably be expected to have a Material Adverse Effect.

6.17 Changes Relating to the Term Debt Credit Documents.

Unless permitted by the Intercreditor Agreement, no Credit Party shall amend, supplement, restate, replace or otherwise modify the terms of any Term Loan Document if such amendment, supplement, restatement, replacement or other modification would (i) increase the principal amount, rate of interest, or amount of fees or other amounts payable thereunder, (ii) accelerate the payment dates or amounts thereunder, or (iii) otherwise confer additional material rights on the applicable lender thereunder in a manner adverse to any Credit Party, the Agent or the Lender.

6.18 Store Closings.

No Credit Party shall close any Store unless the Borrower has provided Agent with at least 15 days' prior written notice of such closing; provided, however, that nothing in this Section 6.18 shall prohibit any Credit Party from doing the following: (a) relocating any Store, or consolidating two or more Stores, within the same shopping complex, or (b) closing any Store upon expiration of the lease agreement governing such Store.

6.19 Change of Locations.

No Credit Party shall change the jurisdiction in which it (i) maintains its registered office, chief executive office or principal place of business, or (ii) carries on business or maintains tangible assets having an aggregate value in excess of \$250,000, unless the Borrower has provided Agent with at least 15 days' prior written notice of such changes.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Events of Default.

It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any Letter of Credit when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) above) payable under this Agreement and such failure shall continue for three Business Days after notice of non-payment is given by the Agent to the Borrower;

(c) any representation or warranty made or deemed made by or on behalf of any Credit Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in any respect) when made or deemed to be made;

(d) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.1(n)(ii) (notices of Defaults or Events of Default), 5.2 (with respect to the Credit Party's existence), 5.7, 5.12, 5.13 or in Article 6;

(e) any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clauses (a), (b) or (d) above) or any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Agent to the Borrower (which notice will be given at the request of any Lender);

(f) any Credit Party shall fail to make any payment whether of principal or interest, and regardless of amount, in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure shall continue beyond the expiry of any applicable grace period expressly provided for in the documentation governing such Material Indebtedness;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 7.1(g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness so long as the proceeds of such sale or transfer are sufficient to, and are applied to, reduce such secured Indebtedness to nil;

(h) any Credit Party:

- (i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it and any class of its creditors;
- (ii) commits an act of bankruptcy under the BIA, or makes an assignment of its property for the general benefit of its creditors under the BIA, or makes a proposal (or files a notice of its intention to do so) under the BIA;
- (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada), the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;
- (iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
- (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 7.1(h) or in Section 7.1(i), or otherwise acts in

furtherance thereof or fails to act in a timely and appropriate manner in defense thereof,

(i) any petition is filed, application made or other proceeding instituted against or in respect of any Credit Party:

- (i) seeking to adjudicate it an insolvent;
- (ii) seeking a receiving order against it under the BIA;
- (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the BIA, the *Companies' Creditors Arrangement Act* (Canada) or the *United States Bankruptcy Code* and any applicable corporations legislation) or at common law or in equity; or
- (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

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

(j) any other event occurs which, under the Applicable Laws of any applicable jurisdiction, has an effect which is comparable to any of the events referred to in either of Sections 7.1(h) or (i);

(k) one or more judgments for the payment of money in a cumulative amount in excess of \$750,000 (or its then equivalent in any other currency) in the aggregate is rendered against the Borrower, any other Credit Party or any combination thereof and the Borrower or the other Credit Party has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has not been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(l) any property of any Credit Party having a fair market value in excess of \$750,000 (or its then equivalent in any other currency) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or any Lien thereon securing Indebtedness in excess of \$750,000 (or its then equivalent in any other currency) is enforced, or such property has become subject to any charging order or equitable execution of a Governmental Authority, or any writ of execution or distress warrant exists in respect of the Borrower, any other Credit Party or the property of any of them, or any sheriff or other Person becomes lawfully entitled by operation of law or

otherwise to seize or distrain upon such property and in any case such seizure, enforcement, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, continues in effect and is not released or discharged for more than 45 days or such longer period during which entitlement to the use of such property continues with the Credit Party (as the case may be), and the Credit Party (as the case may be) is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of the Credit Party (as the case may be), or is sold, in the interim, such grace period will cease to apply;

(m) one or more final judgments, not involving the payment of money and not otherwise specified in this Section 7.1(m), has been rendered against any Credit Party, the result of which could reasonably be expected to result in a Material Adverse Effect, so long as the Credit Party (as the case may be) has not (i) provided for its discharge in accordance with its terms within 30 days from the date of entry thereof, or (ii) procured a stay of execution thereof within 30 days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(n) this Agreement, any other Loan Document or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of any Credit Party, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or thereof is at any time contested by any Credit Party, or any Credit Party denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by any Credit Party of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for any Credit Party to perform any of its material obligations hereunder or thereunder;

(o) any Lien purported to be created by any Security Document shall cease to be, or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) Lien in Collateral with a fair market value or book value (whichever is greater) in excess, individually or in the aggregate, of \$750,000 (or the equivalent in any other currency);

(p) a Material Adverse Change shall occur;

(q) a Change in Control shall occur;

(r) if any Credit Party or any of its Subsidiaries violates any Environmental Law which results in an Action Request, Violation Notice or other notice or control order or cancellation of any license or certificate or approval, that results in any disruption of any Credit Party's business or that could reasonably be expected to have a Material Adverse Effect ;

(s) any event or condition shall occur or exist with respect to a Pension Plan that could reasonably be expected to give rise to a Material Adverse Effect or if any Pension Plan shall be terminated or wound up or a trustee shall be requested or appointed, or if a Credit Party is in default with respect to payments to a Pension Plan resulting from its complete or partial withdrawal from such Pension Plan or the winding up of such Pension Plan, or if any Lien arises (save for contribution amounts not yet due) in connection with any Pension Plan, in each case which could reasonably be expected to have a Material Adverse Effect;

then, and in every such event, and at any time thereafter during the continuance of such event or any other such event, the Agent may, and at the request of the Required Lenders shall, by notice to

the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind except as set forth earlier in this paragraph, all of which are hereby waived by the Borrower, (iii) apply any amounts outstanding to the credit of the Borrower to repayment of all amounts outstanding under this Agreement, and (iv) declare any or all of the Security Documents to be immediately enforceable.

7.2 Remedies.

(a) If an Event of Default described in Section 7.1(h) or 7.1(i) occurs with respect to any Credit Party, then to the extent permitted by Applicable Law, all Obligations shall become automatically due and payable and the Commitment shall terminate, without any action by the Lender or notice of any kind. In addition, or if any other Event of Default has occurred and is continuing, the Agent may, in its discretion, and shall, at the direction of the Required Lenders, do one or more of the following at any time or times and in any order, without notice to or demand on the Borrower: (i) reduce the Commitments, or the advance rates against Eligible Credit Card and Debit Card Account Receivable and/or Eligible Inventory used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base; (ii) restrict the amount of or refuse to make Revolving Loans; (iii) restrict or refuse to provide Letters of Credit and F/X Contracts; (iv) terminate the Commitments; (v) declare any or all Obligations to be immediately due and payable; and (vi) pursue its other rights and remedies under the Loan Documents and applicable law and equity.

(b) If an Event of Default has occurred and is continuing and without limiting any rights or remedies arising under the Security Documents, (i) the Agent shall have for the benefit of the Lenders, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under applicable law (including, as applicable, the PPSA and the *Civil Code of Quebec*) in the jurisdiction where the Collateral is located and all rights and remedies provided for in the Loan Documents; (ii) the Agent may, at any time, take possession of the Collateral and keep it on the Borrower's or any Guarantor's Premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Borrower or any Guarantor shall, upon the Agent's demand, at the Borrower's cost, assemble the Collateral and make it available to the Agent at a place convenient to the Agent; and (iii) the Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its Permitted Discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Borrower and each of the Guarantors agree that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the PPSA, the *Civil Code of Quebec* or otherwise, shall constitute reasonable notice to the Borrower and Guarantors if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least fifteen (15) days prior to such action to the Borrower's address specified in or pursuant to Section 9.1. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without further notice to the Borrower or any Guarantor. If the Agent seeks to take possession of all or any portion of the Collateral by judicial process, the Borrower and each of the Guarantors irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession

prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. The Borrower and each of the Guarantors agree that the Agent and Lenders have no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Agent is hereby granted a license or other right to use, without charge, all of the Borrower's and each Guarantor's Property, whether or not constituting Collateral, including its real estate, Equipment and Intellectual Property Rights (including labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property), in completing production of, advertising or selling any Collateral, and the Borrower's and Guarantors' rights under all licenses and all franchise agreements shall inure to the Agent's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including legal fees, and then to the Obligations. The Agent will return any excess to the Borrower and Guarantors and the Borrower shall remain liable for any deficiency.

(c) If an Event of Default has occurred and is continuing, to the maximum extent permitted by law, the Borrower and each of the Guarantors hereby waive all rights to notice and hearing prior to the exercise by the Agent of the Agent's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.

(d) During the continuance of an Event of Default, the Agent may, and upon the direction of the Required Lenders the Agent shall, apply any and all payments received by the Agent in respect of any Obligation as set forth below. Notwithstanding any provision herein to the contrary, all payments made by or for the account of the Credit Parties to the Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows:

first, to payment of costs and expenses, including legal costs, of the Agent payable or reimbursable by the Credit Parties under the Loan Documents;

second, to payment of legal costs of Lenders payable or reimbursable by the Borrower under this Agreement;

third, to payment of all accrued unpaid interest on the Obligations and fees owed to Agent, Lenders and the Issuing Bank;

fourth, to payment of all Loans, reimbursement obligations in respect of Letters of Credit, F/X Exposure, Cover, and Cash Management Obligations;

fifth, to payment of any other amounts owing which constitute Obligations; and

sixth, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (ii) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its *pro rata* share of amounts available to be applied pursuant to each applicable category.

(e) If the Agent receives any payment from or for the account of a Credit Party in any currency other than the currency in which the Obligation is denominated, the Agent may convert the payment (including the proceeds of realization upon any Collateral) in accordance with its normal practice into the currency in which such Obligation is denominated.

ARTICLE 8 THE AGENT

8.1 Appointment of Agent.

Each Lender hereby designates CIBC as Agent to act as herein specified and as specified in the other Loan Documents. Each Lender hereby irrevocably authorizes the Agent to take such action on its behalf under the provisions of the Loan Documents and to exercise such powers and to perform such duties thereunder as are specifically delegated to or required of the Agent by the terms thereof and such other powers as are reasonably incidental thereto. The Agent may perform any of its duties hereunder by or through its agents or employees.

8.2 Limitation of Duties of Agent.

The Agent shall have no duties or responsibilities except those expressly set forth with respect to the Agent in this Agreement and as specified in the other Loan Documents. Neither the Agent nor any of its Related Parties shall be liable for any action taken or omitted by it hereunder or in connection herewith, unless caused by its or their gross negligence or willful misconduct. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have, by reason of this Agreement or the other Loan Documents, a fiduciary relationship in respect of any Lender. Nothing in this Agreement or the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of this Agreement except as expressly set forth herein. The Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to this Agreement or the other Loan Documents unless it is requested in writing to do so by the Required Lenders.

8.3 Lack of Reliance on the Agent.

(a) Independent Investigation. Independently, and without reliance upon the Agent, each Lender, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Borrower or any other Credit Party in connection with the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of the Borrower or any other Credit Party, and, except as expressly provided in this Agreement and the other Loan Documents, the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the consummation of the Transactions or at any time or times thereafter.

(b) Agent Not Responsible. The Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Agreement or the other Loan Documents or the financial condition of the Borrower and any of the other Credit Parties or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or the other Loan Documents, or the financial condition of the Borrower and any of the other Credit Parties, or the existence or possible existence of any Default or Event of Default.

8.4 Certain Rights of the Agent.

If the Agent shall request instructions from the Lenders or the Required Lenders (as the case may be) with respect to any act or action (including the failure to act) in connection with this Agreement or the other Loan Documents, the Agent shall be entitled to refrain from such act or

taking such action unless and until the Agent shall have received written instructions from the Lenders or the Required Lenders, as applicable, and the Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under this Agreement and the other Loan Documents in accordance with the instructions of the Required Lenders, or, to the extent required by Section 9.2, all of the Lenders.

8.5 Reliance by Agent.

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, electronic mail, order or other documentary teletransmission or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The Agent may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

8.6 Indemnification of Agent.

To the extent the Agent is not reimbursed and indemnified by the Borrower, each Lender will reimburse and indemnify the Agent, in proportion to its aggregate Applicable Percentage, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in performing its duties hereunder, in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements which are determined, by a final, non-appealable decision of a court of competent jurisdiction, to have resulted from the Agent's gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or willful misconduct.

8.7 The Agent in its Individual Capacity.

With respect to its obligations under this Agreement and the Loans made by it, CIBC, in its capacity as a Lender hereunder, shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties, if any, specified herein; and the terms "**Lenders**", "**Required Lenders**", and any similar terms shall, unless the context clearly otherwise indicates, include CIBC, in its capacity as a Lender hereunder. The Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower or any affiliate of the Borrower as if it were not performing the duties, if any, specified herein, and may accept fees and other consideration from the Borrower for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

8.8 May Treat Lender as Owner.

The Borrower and the Agent may deem and treat each Lender as the owner of the Loans recorded on the Register maintained pursuant to Section 9.4(c) for all purposes hereof until a written notice of the assignment or transfer thereof shall have been filed with the Agent. Any request, authority or consent of any Person who at the time of making such request or giving such authority or consent is the owner of a Loan shall be conclusive and binding on any subsequent owner, transferee or assignee of such Loan.

8.9 Successor Agent.

(a) Agent Resignation. The Agent may resign at any time by giving written notice thereof to the Lenders, the issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, upon five Business Days' notice to the Borrower, to appoint a successor Agent, subject to the approval of the Borrower, such approval not to be unreasonably withheld. If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Agent's giving of notice of resignation, then, upon five Business Days' notice to the Borrower, the retiring Agent may, on behalf of the Lenders, appoint a successor Agent (subject to approval of the Borrower, such approval not to be unreasonably withheld), which shall be a financial institution organized under the laws of Canada having a combined capital and surplus of at least \$100,000,000 or having a parent company with combined capital and surplus of at least \$100,000,000; provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to or to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent, as provided for above in the preceding paragraph.

(b) Rights, Powers, etc. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

8.10 No Independent Legal Action by Lenders.

No Lender may take any independent legal action to enforce any obligation of the Borrower hereunder. Each Lender hereby acknowledges that, to the extent permitted by Applicable Law, the Security Documents and the remedies provided thereunder to the Lenders are for the benefit of the Lenders collectively and acting together and not severally, and further acknowledges that each Lender's rights hereunder and under the Security Documents are to be exercised collectively, not severally, by the Agent upon the decision of the Required Lenders. Accordingly, notwithstanding any of the provisions contained herein or in the Security Documents, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder, including any declaration of default hereunder or thereunder, but that any such action shall be taken only by the Agent with the prior written agreement of the Required Lenders (or, in the case of actions to be taken in connection with security granted to any Lender by the Borrower pursuant to Section 427 of the *Bank Act* (Canada), the Lender holding such security shall act solely in accordance with the Agent's instructions), provided that, notwithstanding the foregoing, in the absence of instructions from the Lenders (or the Required Lenders) and where in the sole opinion of the Agent the exigencies of the situation so warrant such action, the Agent may without notice to or consent of the Lenders (or the Required Lenders) take such action on behalf of the Lenders as it deems appropriate or desirable in the interests of the Lenders. Each Lender hereby further covenants and agrees that upon any such written consent being given by the Required Lenders, it shall co-operate fully with the Agent to the extent requested by the Agent, and each Lender further covenants and agrees that all proceeds from the realization of or under the Security Documents (including all amounts received by any Lender in connection with the enforcement of security

granted to it by the Borrower under Section 427 of the *Bank Act* (Canada)), to the extent permitted by Applicable Law, are held for the benefit of all of the Lenders and shall be shared among the Lenders rateably in accordance with this Agreement, and each Lender acknowledges that all costs of any such realization (including all amounts for which the Agent is required to be indemnified under the provisions hereof) shall be shared among the Lenders rateably in accordance with this Agreement. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, so as to fully carry out the intent and purpose of this Section and each Lender hereby covenants and agrees that it shall not seek, take, accept or receive any security for any of the obligations and liabilities of the Borrower hereunder or under the other Loan Documents, or any other document, instrument, writing or agreement ancillary hereto or thereto, other than such security as is provided hereunder or thereunder, and that it shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Credit(s), unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement, as the case may be.

8.11 Notice of Default.

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". The Agent will notify the Lenders of its receipt of any such notice. Subject to Section 8.4, the Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with this Agreement in pursuing any rights or remedies under the Loan Documents or at law or in equity; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

8.12 Agency for Perfection.

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting the Lenders' security interest in assets which can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor, shall deliver such Collateral to the Agent or in accordance with the Agent's instructions.

8.13 Payments by Agent to Lenders.

All payments to be made by the Agent to the Lenders shall be made by bank wire transfer or internal transfer of immediately available funds to each Lender pursuant to wire transfer instructions delivered in writing to the Agent on or prior to the Effective Date (or if such Lender is an Assignee, on the applicable Assignment and Transfer), or pursuant to such other wire transfer instructions as each party may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, premium or interest on the Revolving Loans or otherwise.

8.14 Concerning the Collateral and the Related Loan Documents.

Each Lender authorizes and directs the Agent to enter into this Agreement and the other Loan Documents for the rateable benefit and obligation of the Agent and the Lenders. Each Lender agrees that any action taken by the Agent or Required Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Agent or the

Required Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

8.15 Field Audit and Examination Reports; Disclaimer by Lenders.

By signing this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a "Report" and collectively, "Reports") prepared by the Agent;

(b) expressly agrees and acknowledges that the Agent (i) makes no representation or warranty as to the accuracy of any Report, or (ii) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or other party performing any audit or examination will inspect only specific information regarding the Borrower and/or Guarantors and will rely significantly upon the Borrower's and Guarantor's books and records, as well as on representations of the Borrower's and Guarantor's personnel;

(d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute, except to its participants, or use any Report in any other manner; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower; and (ii) to pay and protect, and indemnify, defend and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including counsel's costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

8.16 Quebec Security.

For greater certainty, and without limiting the powers of the Agent or any other Person acting as an agent or mandatary for the Agent hereunder or under any of the other Loan Documents, for the purposes of holding any hypothec granted to the Attorney (as defined below) pursuant to the laws of the Province of Québec to secure the prompt payment and performance of any and all Obligations by any Credit Party, each of the Lenders hereby irrevocably appoints and authorizes the Agent and, to the extent necessary, ratifies the appointment and authorization of the Agent, to act as the hypothecary representative of the creditors as contemplated under Article 2692 of the Civil Code of Québec (in such capacity, the "Attorney"), and to enter into, to take and to hold on their behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any related deed of hypothec. The Attorney shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney pursuant to any such deed of hypothec and applicable law, and (b) benefit from and be subject to all provisions hereof with respect to the Agent *mutatis mutandis*, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Lenders and Credit Parties. Any person who becomes a

Lender shall, by its execution of a Assignment and Assumption, be deemed to have consented to and confirmed the Attorney as the person acting as hypothecary representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Lender, all actions taken by the Attorney in such capacity. The substitution of the Agent pursuant to the provisions of Article 8 also constitute the substitution of the Attorney.

8.17 F/X Contracts and Cash Management Obligations

The obligations of the Credit Parties (a) in respect of an F/X Contract between the Borrower and an F/X Bank, and (b) in respect of Cash Management Obligations between the Borrower and a Cash Management Provider are secured by the Security Documents, *pari passu* with the obligations of the Credit Parties under the Loan Documents, provided that all decisions regarding the administration and enforcement of the security interests granted under the Security Documents shall be made by the Agent and the Lenders under this Agreement, and while this Agreement remains in effect, any F/X Bank and Cash Management Provider shall (in such capacities) have no voting rights under this Agreement and no other right whatsoever to participate in the administration or enforcement of such security interests. For the avoidance of doubt but without limitation, any or all of the Security Documents or any rights contained therein may be amended or released by the Agent without the consent of any F/X Bank or Cash Management Provider. Each Lender that is or becomes an F/X Bank or Cash Management Provider shall be bound as such by virtue of its execution and delivery of this Agreement or an assignment and assumption agreement substantially in the form of Exhibit C, as applicable, notwithstanding that such capacity as F/X Bank or Cash Management Provider may not be identified on its signature line.

ARTICLE 9 MISCELLANEOUS

9.1 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile in each case to the addressee, as follows:

- (i) if to the Borrower or any other Credit Party:

GRAFTON-FRASER INC.
44 Apex Road
Toronto, ON M6A 2V2
Attention: Rajib Ghosh

with a copy to:

Fasken Martineau DuMoulin LLP
Bay Adelaide Centre
333 Bay Street, Suite 2400
P.O. Box 20, Toronto, ON M5H 2T6

Attention: Jon Holmstrom
Facsimile: 416.364.7813

- (ii) if to the Agent:

CANADIAN IMPERIAL BANK OF COMMERCE.
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2
Attention: Senior Director, Portfolio Management
Facsimile: 416.861.9422

with a copy to:

CANADIAN IMPERIAL BANK OF COMMERCE
199 Bay Street, 11th Floor
Toronto, ON M5L 1A9
Attention: Tim Meadowcroft, Assistant General Counsel
Facsimile: 416.304.4573
Email: tim.meadowcroft@cibc.com

and

NORTON ROSE FULBRIGHT CANADA LLP
200 Bay Street, P.O. Box 84,
Toronto, ON M5J 2Z4
Attention: David Amato
Facsimile: 416.216.1861
Email: david.amato@nortonrosefulbright.com

- (iii) if to any Lender or any Issuing Bank, to it at its address (or facsimile number) set forth opposite its name in the execution page(s) of this Agreement or the applicable Assignment and Assumption Agreement, as the case may be.

(b) Any notice received by the Borrower from the Agent shall be deemed also to have been received by each other Credit Party. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Agent. The Agent or the Borrower may, in its discretion, agree to accept notices and other communication to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

9.2 Waivers; Amendments.

(a) No failure or delay by the Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 9.2(b), and then such waiver or consent shall be effective only in the

specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document (or any provision hereof or thereof) may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Agent with the consent of the Required Lenders (and for greater certainty, any such waiver, amendment or modification shall not require any consent or other agreement of any Credit Party other than the Borrower, notwithstanding that any such Credit Party may be a party to this Agreement or any other Loan Document); provided that no such agreement shall:

- (i) increase the amount of any Commitment of any Lender;
- (ii) extend the expiry date of any Commitment of any Lender;
- (iii) reduce the principal amount of any Loan or reduce the rate of interest or any fee applicable to any Loan;
- (iv) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable in respect thereof, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment;
- (v) change any aspect of this Agreement in a manner that would alter the *pro rata* sharing of payments required herein;
- (vi) change any of the provisions of this Section 9.2 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder;
- (vii) waive any Event of Default under Section 7.1(h), (i) or (j); or
- (viii) except to the extent required by Section 9.17, release the Borrower or any other Credit Party from any material obligations under the Security Documents and other instruments contemplated by this Agreement, release or discharge any of the Liens arising under the Security Documents, permit the creation of any Liens, other than Permitted Liens, on any of the assets subject to the Liens arising under the Security Documents, lower the priority of any Lien arising under any of the Security Documents, or lower the priority of any payment obligation of the Borrower or any other Credit Party under any of the Loan Documents;

in each case without the prior written consent of each Lender; or, in the case of the matters referred to in clauses (ii), (iii), (iv) and (v), without the prior written consent of each Lender directly affected thereby and provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder, without the prior written consent of the Agent. For greater certainty, the Agent may release and discharge the Liens constituted by the Security Documents to the extent necessary to enable the Borrower to complete any asset sale which is not prohibited by this Agreement or the other Loan Documents.

9.3 Expenses; Indemnity; Damage Waiver.

(a) The Borrower shall pay (i) all reasonable Out-of-Pocket Expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of external legal counsel for the Agent and all applicable Taxes, in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents, (ii) all reasonable Out-of-Pocket Expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of external legal counsel for the Agent and applicable Taxes, in connection with any amendments, modifications or waivers of the provisions hereof or of any of the other Loan Documents, (whether or not the transactions contemplated hereby or thereby shall be consummated, including, without limitation, as a result of an assignment by a Lender of all or a portion of its Commitments and Loans pursuant to Section 9.4)), and (iii) all Out-of-Pocket Expenses incurred by the Agent or any Lender, including the reasonable fees, charges and disbursements of external legal counsel for the Agent or any Lender and all applicable Taxes, in connection with the enforcement or protection of their rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made hereunder, including all such Out-of-Pocket Expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Each Credit Party shall indemnify the Agent and each Lender, as well as each Related Party and each assignee of any of the foregoing Persons (each such Person and each such assignee being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all claims and proceedings brought against an Indemnatee, and all losses, claims, cost recovery actions, damages, expenses and liabilities of whatsoever nature or kind and all Out-of-Pocket Expenses and all applicable Taxes associated therewith, to which any Indemnatee may become subject arising out of or in connection with (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder, and the consummation of the Transactions or any other transactions thereunder, (ii) any Loan, Letter of Credit or F/X Contract or any actual or proposed use of the proceeds therefrom, including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any other Credit Party, or any Environmental Liability related in any way to the Borrower or any other Credit Party, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing (including, without limitation, any claim arising out of the Agent or Lender's collection and use of personal information of any Credit Party's principals and/or senior management), whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto, (v) any other aspect of this Agreement and the other Loan Documents, or (vi) the enforcement of any Indemnatee's rights hereunder and any related investigation, defence, preparation of defence, litigation and enquiries; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or wilful misconduct of an Indemnatee.

(c) To the extent that the Borrower fails to pay any amount required to be paid under Sections 9.3 (a) or (b), each Lender severally agrees to pay to the Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent, in its capacity as such.

(d) The Credit Parties shall not assert, and hereby waive (to the fullest extent permitted by Applicable Law), any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document, or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) Any inspection of any property of the Borrower or any other Credit Party made by or through the Agent or any Lender is for purposes of administration of the Credits only, and neither the Borrower nor any other Credit Party is entitled to rely upon the same (whether or not such inspections are at the expense of the Borrower).

(f) By accepting or approving anything required to be observed, performed, fulfilled or given to the Agent or the Lenders pursuant to the Loan Documents, neither the Agent nor the Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Agent or the Lenders.

(g) The relationship between the Borrower and the Agent and the Lenders is, and shall at all times remain, solely that of borrower and lenders. Neither the Agent nor the Lenders shall under any circumstance be construed to be partners or joint venturers of the Borrower or its Affiliates. Neither the Agent nor the Lenders shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Borrower or its Affiliates, or to owe any fiduciary duty to the Borrower or its Affiliates. Neither the Agent nor the Lenders undertake or assume any responsibility or duty to the Borrower or its Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Borrower or its Affiliates of any matter in connection with their property or the operations of the Borrower or its Affiliates. The Borrower and its Affiliates and all Shareholders and all direct and indirect shareholders of the Credit Parties shall rely entirely upon their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Agent or the Lenders in connection with such matters is solely for the protection of the Agent and the Lenders, and neither the Borrower nor any other Person is entitled to rely thereon.

(h) The Agent and the Lenders shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to Property caused by the actions, inaction or negligence of the Borrower or any other Credit Party and/or their Affiliates and/or any shareholder and/or any direct or indirect shareholder of a Credit Party; each Credit Party hereby indemnifies and holds the Agent and the Lenders harmless from any such loss, damage, liability or claim.

(i) This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Borrower, the Agent and the Lenders in connection with the Loans, and is made for the sole benefit of the Borrower, each other Credit Party, the Agent and the Lenders, and the Agent's and each Lender's successors and assigns. Except as provided in Sections 9.3(b) and 9.4, no other Person shall have any rights of any nature hereunder or by reason hereof.

(j) All amounts due under this Section 9.3 shall be payable not later than three Business Days after written demand therefor.

9.4 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitments and the Loans at the time owing to it); provided that (i) except in the case of an assignment of (x) any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, each of the Agent and the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed) by the Borrower; and provided further that (ii) notwithstanding clause (i) immediately above, the Borrower's consent shall not be required with respect to any assignment made at any time after the occurrence and during the continuance of an Event of Default, or in connection with any assignment by a Lender to an Affiliate of such Lender, (iii) except in the case of an assignment to a Lender or a Lender Affiliate or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date on which the Assignment and Assumption relating to such assignment is delivered to the Agent) shall not be less than \$1,000,000 (or, in the case of a U.S. Dollar-denominated Commitment, the U.S. \$ Equivalent of \$1,000,000), unless each of the Borrower and the Agent otherwise consent in writing and the amount held by each Lender after each such assignment shall not be less than Canadian \$1,000,000 (or, in the case of a U.S. Dollar-denominated Commitment, the U.S. \$ Equivalent of \$1,000,000), unless each of the Borrower and the Agent otherwise consent in writing, (iv) each partial assignment in respect of a Commitment and the related Loans shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of such Commitment and the related Loans, (v) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with (except in the case of an assignment to a Lender or a Lender Affiliate) a *processing and recordation fee* of \$3,500, payable by the assigning Lender, (vi) such assignment shall not be to an Affiliate of the Borrower, to a Defaulting Lender or to a Deteriorating Lender, and (vii) the assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire. The Agent shall provide the Borrower and each Lender with written notice of any change in (or new) address of a Lender disclosed in an Administrative Questionnaire. Subject to acceptance and recording thereof pursuant to Section 9.4(d), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, shall have all of the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, and 2.14 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(e).

(c) The Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Agent, and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 9.4(b) and any written consent to such assignment required by Section 9.4(b), the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.4(d).

(e) Any Lender may, without notice to the Borrower or the consent of the Borrower or the Agent, sell participations to one or more Persons (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.2(b) that affects such Participant. Subject to Section 9.4(f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to this Section 9.4(b). To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.15(c) as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and Section 9.4 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

9.5 Survival.

All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this

Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. Sections 2.12, 2.13, 2.14 and 9.3 and Article 8 shall survive and remain in full force and effect, regardless of the consummation of the Transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

9.6 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed original counterpart of a signature page of this Agreement by facsimile or other electronically scanned method of delivery shall be as effective as delivery of a manually executed original counterpart of this Agreement.

9.7 Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

9.8 Right of Set-Off.

Each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Credit Party against any of and all of the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured and regardless of the currency of the deposit. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set off) which such Lender may have.

9.9 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the Laws of the Province of Ontario.

(b) Each of the Credit Parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Courts of the Province of Ontario, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement, or any other Loan Document or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. Nothing in this Agreement shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Credit Parties or their properties in the courts of any other jurisdiction.

(c) Each of the Credit Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in this Section 9.9. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Applicable Law.

9.10 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

9.11 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

9.12 Confidentiality.

Each of the Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to each of their, and each of their Affiliates', directors, officers, employees, agents and advisors, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and the disclosing party shall be responsible to ensure that they abide by the confidentiality restrictions otherwise imposed on it under this Section 9.12), (b) to the extent requested by any rating agency, regulatory authority or other Governmental Authority, or their legal

counsel, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which event, the disclosing party will promptly notify the Borrower of such requirement and, if applicable law so permits, allow the Borrower to seek a protective order with respect thereto), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under any Loan Document or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or prospective assignee of or Participant (or such assignee's or Participant's advisors) in any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) to their auditors in connection with any audit, (h) to any financial institution (other than as otherwise identified in this Section 9.12), credit reporting agency or credit bureau, (i) to any Person with whom the Borrower or any other Credit Party may have or proposes to have financial dealings, or (j) with the consent of the Borrower. For greater certainty, the Borrower and each of the Credit Parties acknowledges that from time to time, the Borrower or any other Credit Party may request the Agent to facilitate the provision of certain financial services offered by CIBC (the "**CIBC Services**"). In such circumstances, CIBC policies and procedures ("**CIBC's Policies**") will apply in respect of all transactions undertaken by CIBC in connection with the provision of the CIBC Services, including any required due diligence investigation and related business approval processes conducted in respect of the Borrower and the other Credit Parties. The Borrower and each of the Credit Parties consents to the use of Information by CIBC for the purpose of facilitating compliance with CIBC's Policies. For the purposes of this Section, "Information" means all information received from the Borrower or any Credit Party relating to the Borrower, any of the Credit Parties, or their respective businesses, other than Information that is (i) is or becomes publicly available other than as a result of a breach of this Section, (ii) any such information that is or becomes available to the Agent, the Issuing Bank, or any Lender on a non-confidential basis prior to disclosure by the Borrower, or (iii) was already in the possession of the Agent, the Issuing Bank, or any Lender prior to its disclosure by the Borrower or any other Credit Party; or (iv) marked "non-confidential" (or such other words or expression having the same or similar meaning by the Borrower or any other Credit Party).

9.13 Press Releases and Related Materials.

Each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or any of the Lenders or referring to this Agreement, or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent or the applicable Lender unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with the Agent or the applicable Lender before issuing such press release or other public disclosure. Each Credit Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using its name, product photographs, logo or trademark. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

9.14 Anti-Money Laundering Legislation.

(a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrower, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Borrower, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any

Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Agent has ascertained the identity of the Borrower or any authorized signatories of the Borrower for the purposes of applicable AML Legislation, then the Agent:

- (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
- (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower or any authorized signatories of the Borrower on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any such authorized signatory in doing so.

9.15 Defaulting Lenders.

Notwithstanding any provision of this Agreement to the contrary, if any Lender is a Defaulting Lender, then the following provisions shall apply to such Lender for so long as it remains a Defaulting Lender:

(a) fees shall cease to accrue pursuant to Section 2.10 in respect of the Commitment of such Defaulting Lender;

(b) the Commitments of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.2); provided that any waiver or amendment which affects such Defaulting Lender differently than other Lenders generally shall require the consent of such Defaulting Lender;

(c) any amount owing by a Defaulting Lender to the Agent or another Lender that is not paid when due shall bear interest at the interest rate applicable to Loans denominated in the applicable currency during such period;

(d) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender other than in respect of the assignment of such Defaulting Lender's Loans and Commitments) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Agent in a segregated account and, subject to any applicable requirements of Law, be applied at such time or times as may be determined by the Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder, (ii) second, *pro rata*, to the payment of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder, (iii) third, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, (iv) fourth, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement (the amount of such cash collateral not to exceed the Commitment of such Defaulting Lender less the outstanding principal amount of such Defaulting Lender's Loans), (v) fifth, to the payment of any other amounts owing to the Lenders or the Issuing Banks hereunder, (vi) sixth, to the payment of any amounts owing to the Borrower as a

result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, and (vii) seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a prepayment of the principal amount of any Loans or reimbursement obligations in respect of Letters of Credit with respect to which a Defaulting Lender has funded its participation obligations, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all Lenders other than Defaulting Lenders *pro rata* prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender;

(e) if a Defaulting Lender is an insolvent Defaulting Lender, any amount payable to such Defaulting Lender hereunder may, in lieu of being distributed pursuant to Section 9.15(d), be retained by the Agent to collateralize indemnification and reimbursement obligations of such Defaulting Lender hereunder in an amount determined by the Agent, acting reasonably; and

(f) Each Defaulting Lender shall be required to provide cash collateral to the Agent, for the benefit of the Lenders, to cover its obligation to make payment in respect of its *pro rata* share of any outstanding Letters of Credit. To the extent that such cash collateral has not been provided, the Letter of Credit Exposure shall be allocated among the other Lenders, *pro rata* in accordance with their Commitments, provided that in the event that the allocation of such Letter of Credit Exposure causes a Lender to exceed its Commitment, the Borrower shall immediately repay to the Agent, for the benefit of each such Lender, the amount necessary to reduce the Letter of Credit Exposure such that the relevant Commitments are not exceeded. Notwithstanding anything else herein, while any Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue any Letter of Credit unless it is satisfied that the Letter of Credit Exposure will be entirely covered by the Lenders who are not Defaulting Lenders.

No Commitment of any other Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 9.15, performance by the Borrower of its obligations hereunder and the other Loan Documents shall not be excused or otherwise modified as a result of any Lender becoming a Defaulting Lender. The rights and remedies against a Defaulting Lender under this Section 9.15 are in addition to other rights and remedies which the Borrower may have against such Defaulting Lender as a result of it becoming a Defaulting Lender and which the Agent or any other Lender may have against such Defaulting Lender with respect thereto.

9.16 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

9.17 Discharge of Security.

After the Termination Date, but subject to the next sentence, the Agent shall, at the request and expense of the Borrower, execute and deliver such releases and discharges of the Security and authorizations to discharge registrations thereof as the Borrower shall prepare and reasonably request. In connection with the foregoing, the Lender shall also execute and deliver to the Credit Parties all such other documents and instruments as the Borrower shall prepare and which are necessary to release or reconvey (without representation or warranty of title) to the Credit Party entitled thereto any and all remaining Collateral that was subject to the Security. Before executing such discharges, the Agent may require the Borrower to deposit with the Agent cash collateral (accompanied by an assignment of credit balances or other appropriate security agreement creating

a security interest in such cash collateral) or (at the Borrower's option) deliver to the Agent a standby letter of credit (in form and substance satisfactory to the Agent acting reasonably) issued by a bank listed in Schedule I, II or III of the *Bank Act* (Canada) in an amount equal to the sum of (a) 105% of the stated amount of each outstanding Letter of Credit and (b) a reserve for potential charge-backs against any Credit Party's accounts with the Agent for items returned through clearing (based on past experience). The Agent shall promptly account to the Borrower for any remaining balance of any portion of cash collateral so deposited with the Agent with respect to (i) each Letter of Credit as such Letter of Credit expires or is fully drawn on and (ii) charge-backs 30 days after the Termination Date.

9.18 Paramountcy.

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall prevail.

9.19 LIMITATION OF LIABILITY.

NO CLAIM MAY BE MADE BY THE BORROWER, ANY GUARANTOR, ANY LENDER OR OTHER PERSON AGAINST THE AGENT, ANY LENDER, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND THE BORROWER, EACH GUARANTOR, EACH LENDER AND THE AGENT HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

9.20 Language.

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. *À la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.*

[Balance of page left blank; signature pages follow]

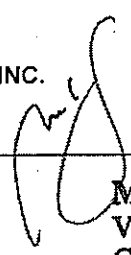
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

GRAFTON-FRASER INC.

Per: _____

Name: _____

Title: _____

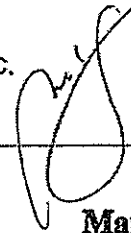

Mark G. Sun
Vice President & CFO
Grafton-Fraser Inc.

2373304 ONTARIO INC.

Per: _____


Name: _____

Title: _____


Mark G. Sun
Vice President & CFO
Grafton-Fraser Inc.

CANADIAN IMPERIAL BANK OF COMMERCE,
as Agent and as Lender

By: 
Name: **Italo Fortino**
Title: **Authorized Signatory**

By: 
Name: **Kyle Lane**
Title: **Authorized Signatory**

SCHEDULE A
COMMITMENTS

<u>Lender</u>	<u>Commitment</u>
Canadian Imperial Bank of Commerce	35,000,000

SCHEDULE 3.3
APPROVALS

1. Nil.

SCHEDULE 3.5

LITIGATION

GRAFTON-FRASER INC.

Tariq Bhatti versus Grafton-Fraser Inc.

On May 16th, 2014, a statement of claim was filed by Tariq Bhatti in the amount of \$124, 583 plus interest for general damages and wrongful dismissal. Tariq Bhatti was dismissed on May 18, 2012 due to the release of sensitive and confidential corporate information to outside parties. Since this is a provincial court claim, damages are capped at \$50,000 in Alberta. A dispute note was prepared and sent to the legal representatives of Tariq Bhatti.

2473304 ONTARIO INC.

None.

SCHEDULE 3.7
OWNERSHIP OF BORROWER

GRAFTON-FRASER INC.

Voting Shares	Post Nov 20 2012	
<u>Class A Common Shares</u>		
HEP North America Investments, L.P.	194,485	1.4%
1903 Co-Investor, L.P.	636,536	4.5%
1903 Equity Fund, LP	13,386,479	94.2%
Total Class A Common Shares	14,217,500	100.0%
<u>Class B common Shares</u>		
Stonehouse Group Inc.	10,725,482	100.0%
Non-Voting Shares		
<u>Class A Preferred Shares</u>		
HEP North America Investments, L.P.	95,515	1.4%
1903 Co-Investor, L.P.	312,616	4.5%
1903 Equity Fund, LP	6,574,369	94.2%
Total Class A Preferred Shares	6,982,500	100.0%
<u>Class B Preferred Shares</u>		
Stonehouse Group Inc.	5,267,500	100.0%
<u>Class C-1 Preferred Shares</u>		
1903 Co-Investor, L.P.	465,833	6.7%
1903 Equity Fund, LP	3,534,167	50.5%
Stonehouse Group Inc.	3,000,000	42.9%
Total Class C-1 Preferred Shares	7,000,000	100.0%
<u>Class C-2 Preferred Shares</u>		
Stonehouse Group Inc.	3,000,000	100.0%

2473304 ONTARIO INC.

Capital Structure

Voting Shares

<u>Common Shares (unlimited)</u>	<u># of Shares</u>	<u>% Ownership</u>
Grafton Fraser Inc.	10	100%

SCHEDULE 3.9

LIENS ON REAL PROPERTY

There is no real property owned by the Borrowers.

SCHEDULE 3.10

LIENS ON PERSONAL PROPERTY

GRAFTON-FRASER INC.

ONTARIO

Currency Date: February 4, 2016

	File No./ Registration No.	Current Debtor	Current Secured Party	Current Collateral Classification	Current General Collateral Description and other Particulars
1.	712571193/ 20151211 1111 1590 9308	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	Expiry Date: December 11, 2022
2.	702014067/ 20141202 1415 1862 6357	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West 11 th Floor Toronto, ON M5X 1A1	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024
3.	675686367/ 20120117 1707 1462 5917	Grafton Fraser Inc.	Xerox Canada Ltd. 33 Bloor St. E. 3 rd Floor Toronto, ON M4W 3H1	Equipment, Other	Expiry Date: January 17, 2018
4.	635312304/ 20070515 1330 1590 4800 20070524 1634 1590 5263	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	Expiry Date: May 15, 2023 An amendment was registered

	File No./ Registration No.	Current Debtor	Current Secured Party	Current Collateral Classification	Current General Collateral Description and other Particulars
	20080911 1204 1862 8943 20140618 0907 1862 4301 20140618 0907 1862 4302		345 Park Avenue 31 st Floor New York, NY 10154		<p>on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc.</p> <p>An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008.</p> <p>An eight year renewal was registered on June 18, 2014.</p> <p>An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014.</p>

ALBERTA

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	07051518194 07052433799 08091120192 14061813285	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 All present and after-acquired personal property of the debtor. Proceeds: goods, inventory, chattel paper, documents of title, instruments, money, intangibles, accounts and investment property (all as defined in the Personal Property Security Act (Alberta)) and insurance proceeds. An amendment was registered on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	07051518228 07052433823 08091120557 14061813504	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: Infinity Land Charge An amendment was registered on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc.

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
				<p>An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008.</p> <p>An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014.</p>
3.	14120229647	Grafton-Fraser Inc.	<p>Bank of Montreal</p> <p>100 King Street West, 11th Floor Toronto, ON M5X 1A1</p>	<p>(To be discharged as of Effective Date.)</p> <p>Expiry Date: December 2, 2024.</p> <p>All present and after-acquired personal property of the debtor.</p>
4.	15121123969	Grafton-Fraser Inc.	<p>Canadian Imperial Bank of Commerce, as Agent</p> <p>595 Bay St., Suite 500 Toronto, ON M5G 2C2</p>	<p>Expiry Date: December 11, 2022.</p> <p>All present and after-acquired personal property of the debtor.</p>

BRITISH COLUMBIA

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	673469D 692841D 584510E 022741I 022749I	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 All present and after acquired personal property of the debtor and, without limitation, all fixtures, crops, and licences. An amendment was registered on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. An eight year renewal was registered on June 18, 2014.
2.	320113I	Grafton Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024. All of the debtor's present and after-acquired personal property; all present and after-acquired licences of the debtor; all proceeds including accounts, money, chattel paper, intangibles, goods, documents of title, instruments, investment property, substitutions, crops, licences, trade ins, insurance proceeds and any other form of proceeds.

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
3.	006240J	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022. All of the Debtor's present and after-acquired personal property, including without limitation fixtures (and terms used herein that are defined in the Personal Property Security Act of British Columbia or the Regulations made thereunder have those defined meanings)

NOVA SCOTIA

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	12429908 12475067 14411458 14435473 22922041 22922058	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property. An amendment was registered on May 25, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	23656580	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024. A security interest is taken in all of the debtor's present and after-acquired personal property.
3.	25333774	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property

NEW BRUNSWICK

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	14856603 14897839 16694143 24542425 24542433	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property. An amendment was registered on May 25, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	25229261	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024. A security interest is taken in all of the debtor's present and after-acquired personal property.
3.	26802256	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property.

PRINCE EDWARD ISLAND

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	1808100 1813498 2110030 3448460 3448479	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 16, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property. An amendment was registered on May 25, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	3568785	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024. A security interest is taken in all of the debtor's present and after-acquired personal property.
3.	3837263	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property

NEWFOUNDLAND

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	5697597 5723719 6856752 12056081 12056107	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property. An amendment was registered on May 25, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	12521043	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: December 2, 2024. A security interest is taken in all of the debtor's present and after-acquired personal property.
3.	13551015	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property

SASKATCHEWAN

Search Date: February 9, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	300170103	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 All of the debtor's present and after-acquired personal property. An amendment was registered on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 11, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
2.	301276090	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: November 24, 2024. All present and after-acquired personal property of the debtor.
3.	301426712	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022. All of the Debtor's present and after-acquired property.

MANITOBA

Search Date: February 9, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	201422784301	Grafton-Fraser Inc.	Bank of Montreal 100 King Street West, 11 th Floor Toronto, ON M5X 1A1	(To be discharged as of Effective Date.) Expiry Date: November 24, 2024. The security interest is taken in all of the debtor's present and after-acquired personal property.
2.	200708558108 200709257110 200817971317 200818082818 201411136219	Grafton-Fraser Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: May 15, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property. An amendment was registered on May 24, 2007 to amend the debtor's name from GF Acquisition Corp. to Grafton-Fraser Inc. An assignment from GSO Special Situations Fund LP, as Administrative Agent to GSO CP Holdings LP, as Administrative Agent was registered on September 16, 2008. An assignment from GSO CP Holdings LP, as Administrative Agent to GSO Capital Partners LP, as Administrative Agent was registered on June 18, 2014. A renewal was registered on June 18, 2014.
3.	201523726507	Grafton-Fraser Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022. The security interest is taken in all of the debtor's present and after-acquired personal property.

QUEBEC

Search Date: February 10, 2016

REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (HYPOTHECS AND HYPOTHECARY RIGHTS)						
	DEBTOR(S)	SECURED PARTY(IES)	REGISTRATION NUMBER / NATURE	DATE / EXPIRY DATE	COLLATERAL DESCRIPTION	COMMENTS

Nil

REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (OTHER REGISTRATIONS)						
	DEBTOR(S)	SECURED PARTY(IES)	REGISTRATION NUMBER / NATURE	DATE / EXPIRY DATE	COLLATERAL DESCRIPTION	COMMENTS

Nil

2473304 ONTARIO INC.

ALBERTA

Search Date: February 8, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	1512113972	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022. All present and after-acquired personal property of the debtor.
2.	16020824329	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: February 8, 2023 All present and after-acquired personal property of the debtor.
3.	16020824361	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: Infinity Land Charge

BRITISH COLUMBIA

Search Date: February 9, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	006238J	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022 All of the Debtor's present and after-acquired personal property, including without limitation fixtures (and terms used herein that are defined in the Personal Property Security Act of British Columbia or the Regulations made thereunder have those defined meanings)
2.	103129J	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: February 9, 2023 All of the Debtor's present and after-acquired personal property, including without limitation fixtures (and terms used herein that are defined in the Personal Property Security Act of British Columbia or the Regulations made thereunder have those defined meaning)

MANITOBA

Search Date: February 8, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	201523727309	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022 The security interest is taken in all of the debtor's present and after-acquired personal property.
2.	201602373709	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: February 8, 2023 The security interest is taken in all of the debtor's present and after-acquired personal property.

NEW BRUNSWICK

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	26802348	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property.

NEWFOUNDLAND

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	13551080	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property.

NOVA SCOTIA

Search Date: February 8, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	25333881	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property.
2.	25531898	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: February 8, 2023 A security interest is taken in all of the debtor's present and after-acquired personal property.

ONTARIO

File Currency Date: February 8, 2016

	File No./ Registration No.	Current Debtor	Current Secured Party	Current Collateral Classification	Current General Collateral Description and other Particulars
1.	713919771/ 20160208 1552 1590 2961	2473304 Ontario Inc.	GSO Capital Partners LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	Expiry Date: February 8, 2023
2.	712571265/ 20151211 1112 1590 9309	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	Expiry Date: December 11, 2022
3.	710539839/ 20151002 1709 1462 8104	2473304 Ontario Inc. Jones New York	Xerox Canada Ltd 33 Bloor St. E. 3 rd Floor Toronto, ON M4W 3H1	Equipment, Other	Expiry Date: October 2, 2021

PRINCE EDWARD ISLAND

Search Date: February 5, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	3837307	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 14, 2022. A security interest is taken in all of the debtor's present and after-acquired personal property.

SASKATCHEWAN

Search Date: February 8, 2016

	Registration No.	Current Debtor	Current Secured Party	Current General Collateral Description and other Particulars
1.	301426711	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce, as Agent 595 Bay St., Suite 500 Toronto, ON M5G 2C2	Expiry Date: December 11, 2022. All of the debtor's present and after-acquired property.
2.	301445539	2473304 Ontario Inc.	GSO Capital Partners, LP, as Administrative Agent 345 Park Avenue 31 st Floor New York, NY 10154	Expiry Date: February 8, 2023 All of the debtor's present and after-acquired property.

QUEBEC

Search Date: February 10, 2016

REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (HYPOTHECS AND HYPOTHECARY RIGHTS)						
	DEBTOR(S)	SECURED PARTY(IES)	REGISTRATION NUMBER / NATURE	DATE / EXPIRY DATE	COLLATERAL DESCRIPTION	COMMENTS
1.	2473304 Ontario Inc.	Canadian Imperial Bank of Commerce Banque Canadienne Impériale de Commerce	16-0112102-0001 / Conv. hyp. without delivery	Feb. 10, 2016 / Feb. 10, 2026	The universality of al movable property.	Amount: \$70,000,000

REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS (OTHER REGISTRATIONS)						
	DEBTOR(S)	SECURED PARTY(IES)	REGISTRATION NUMBER / NATURE	DATE / EXPIRY DATE	COLLATERAL DESCRIPTION	COMMENTS

Nil

SCHEDULE 3.13

DEFAULTS

Nil.

SCHEDULE 3.15

SUBSIDIARIES

2473304 Ontario Inc. is a wholly owned subsidiary of Grafton-Fraser Inc.

The Borrowers do not have any additional subsidiaries.

SCHEDULE 3.18

MATERIAL CONTRACTS

GRAFTON-FRASER INC.

Material Contracts	Commentary
a. Daniel Hechter of Paris - Canada	Licensed marks
b. Daniel Hechter of Paris - United States	Licensed marks
c. Jones Investment Co. Inc.	Jones New York licensed marks
d. GSO Special Situations Fund LP	Long-term debt

2473304 ONTARIO INC.

Material Contracts	Commentary
a. Authentic Brands Group-Jones, LLC	Licensed marks, distribution of licensed Men's, Women's and Children's fashions
b. Jones Apparel (Canada) Ltd.	Asset purchase agreement re: 34 Jones New York branded retail stores and a warehouse centre in Canada

SCHEDULE 3.19
DISCLOSED MATTERS

Except for the Litigation disclosed in Schedule 3.5, there are no further Disclosed Matters of the Borrowers.

SCHEDULE 3.20
EMPLOYEE MATTERS

GRAFTON-FRASER INC.

1. The following employees will receive special payments upon termination:

- a) Dave McGregor;
- b) Mark Sun,
- c) Erin Riordon.

2473304 ONTARIO INC.

Nil.

SCHEDULE 3.22

INTELLECTUAL PROPERTY MATTERS


GRAFTON-FRASER INC.





Patents




There are no patent applications or registrations.







Trademarks




Registrations

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA628,156	AUTOFLEX
Grafton-Fraser Inc.	TMA414,940	BRITCHES
Grafton-Fraser Inc.	TMA444,217	 BRITCHES CLASSIC SPORT DESIGN (NEW/BLUE)
Grafton-Fraser Inc.	TMA505,684	BRITCHES GREAT OUTDOOR COLLECTION
Grafton-Fraser Inc.	TMA527,329	BRITCHES GREAT OUTDOORS
Grafton-Fraser Inc.	TMA316,448	 CRICKETEER & DESIGN
Grafton-Fraser Inc.	TMA627,469	GEORGE RICHARDS BIG & TALL
Grafton-Fraser Inc.	TMA627,344	GEORGE RICHARDS BIG & TALL MENSWEAR
Grafton-Fraser Inc.	TMA647,678	HARWICK
Grafton-Fraser Inc.	TMA647,864	KINGSPORT
Grafton-Fraser Inc.	TMA690,431	LIVE LARGE BIG & TALL
Grafton-Fraser Inc.	TMA330,679	MADISON CLUB

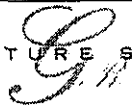


Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA782,213	MR. BIG & TALL
Grafton-Fraser Inc.	TMA288,827	NABOUR STORES
Grafton-Fraser Inc.	TMA536,123	 NORTEK & DESIGN
Grafton-Fraser Inc.	TMA802,497	NXT Nortek
Grafton-Fraser Inc.	TMA664,981	PROFILO
Grafton-Fraser Inc.	TMA782,214	SIGNATURE CARRINGTON
Grafton-Fraser Inc.	TMA561,639	STONEHOUSE
Grafton-Fraser Inc.	TMA529,956	THE SUIT EXCHANGE
Grafton-Fraser Inc.	TMA315,357	AVENUE RD.
Grafton-Fraser Inc.	TMA382,405	BACK COUNTRY
Grafton-Fraser Inc.	TMA570,678	 BOSA DESIGN
Grafton-Fraser Inc.	TMA500,577	BUSINESS CASUAL
Grafton-Fraser Inc.	TMA307,085	 CARRINGTON & DESIGN
Grafton-Fraser Inc.	TMA425,742	CLUB VIP GOLD
Grafton-Fraser Inc.	TMA316,499	CRICKETEER
Grafton-Fraser Inc.	TMA528,236	 EARTH CANADA CREW & DESIGN
Grafton-Fraser Inc.	TMA512,455	EARTH CREW




Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA383,683	EDITIONS BY GEORGE RICHARDS
Grafton-Fraser Inc.	TMA321,831	FOREIGN TRADE
Grafton-Fraser Inc.	TMA463,336	FRIDAY WEAR
Grafton-Fraser Inc.	TMA306,621	 GEORGE RICHARDS KINGSIZE CLOTHIERS FOR BIG AND TALL & DESIGN
Grafton-Fraser Inc.	TMA311,494	GIANNI MARCO
Grafton-Fraser Inc.	TMA337,868	GRAFTON & Co. GRAFTON & CO. DESIGN
Grafton-Fraser Inc.	TMA286,808	 GRAFTON CLUB SINCE 1853 & DESIGN
Grafton-Fraser Inc.	TMA386,509	 INTERNATIONAL ZONES & DESIGN
Grafton-Fraser Inc.	TMA383,393	INTERNATIONAL ZONES
Grafton-Fraser Inc.	TMA231,809	LEISHMAN
Grafton-Fraser Inc.	UCA011495	LEISHMAN CLOTHES
Grafton-Fraser Inc.	TMA325,166	MR. BIG 'N TALL
Grafton-Fraser Inc.	TMA169,081	NEW EDITIONS
Grafton-Fraser Inc.	TMA443,255	NORTHWOODS
Grafton-Fraser Inc.	TMA593,967	PROFILO CLASSICS
Grafton-Fraser Inc.	TMA490,828	REPP LTD.

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA472,738	 REPP LTD. BIG & TALL (DESIGN)
Grafton-Fraser Inc.	TMA433,896	Signature Series SIGNATURE SERIES DESIGN
Grafton-Fraser Inc.	TMA228,964	TIP TOP
Grafton-Fraser Inc.	TMA500,592	 TIP TOP BUSINESS CASUAL & DESIGN
Grafton-Fraser Inc.	TMA576,108	TIP TOP CLASSICS
Grafton-Fraser Inc.	TMDA028783	TIP TOP TAILORS
Grafton-Fraser Inc.	TMA438,656	 TIP TOP TAILORS & DESIGN
Grafton-Fraser Inc.	TMA500,590	 TIP TOP VÊTEMENTS D'AFFAIRES DÉCONTRACTÉS & DESIGN
Grafton-Fraser Inc.	TMA293,888	 TIP TOP WAREHOUSE OUTLET & DESIGN
Grafton-Fraser Inc.	TMA429,886	 TT & CO. SPORT & DESIGN
Grafton-Fraser Inc.	TMA511,103	TT & COMPANY

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA511,104	 TT & COMPANY & DESIGN
Grafton-Fraser Inc.	TMA441,932	UP COUNTRY
Grafton-Fraser Inc.	TMA894056	GEORGE RICHARDS XL
Grafton-Fraser Inc.	TMA894054	MR. BIG AND TALL XL
Grafton-Fraser Inc.	5559375 (Japan)	GRAFTON 1853 & Design  GRAFTON 1853
Grafton-Fraser Inc.	45-0045464 (South Korea)	GRAFTON 1853 & Design  GRAFTON 1853

Applications

Owner	Application Number ³	Trademark
Grafton-Fraser Inc.	1,524,143	SIGNATURE SERIES  GR SIGNATURE SERIES DESIGN
Grafton-Fraser Inc.	1,522,461	 GRAFTON 1853 GRAFTON 1853 & DESIGN
Grafton-Fraser Inc.	1,655,859	GRAFTON 1853 LIQUID WOOL
Grafton-Fraser Inc.	10666131 (China) Class 25 (wares)	GRAFTON 1853 & Design  GRAFTON 1853

Owner	Application Number ³	Trademark
Grafton-Fraser Inc.	10666130 (China) Classes: 35 (services)	GRAFTON 1853 & Design 
Grafton-Fraser Inc.	85442756 (US)	GEORGE RICHARDS XL
Grafton-Fraser Inc.	85441968 (US)	 GR SIGNATURE SERIES (STYLIZED LETTERS)
Grafton-Fraser Inc.	85440851 (US)	 GRAFTON 1853 AND DESIGN
Grafton-Fraser Inc.	85441590 (US)	MR. BIG AND TALL XL

Copyrights

There are no copyright registrations or applications.

2473304 ONTARIO INC.

None.

SCHEDULE 3.28

OWNED AND LEASED REAL PROPERTY

GRAFTON-FRASER INC.

Grafton-Fraser Inc. does not own any real property.

Below is a list of all leased real property of Grafton-Fraser Inc. (as lessee). Inventory is present at all of the locations on the list below.

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	132 Bennett Drive	Gander	NL	Tip Top Tailors	Gander S.C. Ltd.
Grafton-Fraser Inc.	2020A Sherwood Drive	Sherwood Park	AB	Tip Top Tailors	Sherwood Park Mall Ltd.
Grafton-Fraser Inc.	19 Cromer Avenue	Grand Falls	NL	Tip Top Tailors	511398 New Brunswick Inc.
Grafton-Fraser Inc.	1381 Regent Street Store# 21	Fredericton	NB	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	419 King Street West (Stevenson Rd)	Oshawa	ON	Tip Top Tailors	Oshawa Ctr Holdings Inc.
Grafton-Fraser Inc.	3292 Dunmore Rd. SE, #155	Medicine Hat	AB	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	317-7th Avenue SW, Unit #374	Calgary	AB	Tip Top Tailors	20 Vic Management Inc.
Grafton-Fraser Inc.	1642Merivale Road	Ottawa	ON	Tip Top Tailors	1642 Merivale Road Lp
Grafton-Fraser Inc.	2102 11th Avenue	Regina	SK	Tip Top Tailors	Cornwall Centre Inc.
Grafton-Fraser Inc.	3625 Shaganappi Trail NW	Calgary	AB	Tip Top Tailors	Market Mall Leaseholds
Grafton-Fraser Inc.	2755 Gordon Road	Regina	SK	Tip Top Tailors	Arcturus Lp Itf
Grafton-Fraser Inc.	2441 King George Hwy. Suite 17	Douglastown	NB	Tip Top Tailors	Riocan Reit-(Rmi)

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	501 1st Avenue South Unit #D-10	Lethbridge	AB	Tip Top Tailors	Primaris Mgmnt Inc.
Grafton-Fraser Inc.	137th Avenue & 66th Street Unit#L55	Edmonton	AB	Tip Top Tailors	Londonderry Mall
Grafton-Fraser Inc.	1680 Richmond Street North	London	ON	Tip Top Tailors	Ontrea Inc.
Grafton-Fraser Inc.	509 Bayfield Street	Barrie	ON	Tip Top Tailors	Rmi-Itf-Georgian Mall.
Grafton-Fraser Inc.	54 Maple Valley Road	Cornerbrook	NL	Tip Top Tailors	Montez (Corner Brook) Inc
Grafton-Fraser Inc.	1485 Portage Avenue, Unit #L167	Winnipeg	MB	Tip Top Tailors	Ontrea Inc.
Grafton-Fraser Inc.	435 Stone Road Mall, Unit M7	Guelph	ON	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	100 King Street West. PO Box 219	Toronto	ON	Tip Top Tailors	Brookfield Prop.(Pi) Inc.
Grafton-Fraser Inc.	67 St. (at Gaetz Avenue) Unit #149	Red Deer	AB	Tip Top Tailors	Morguard Real Estate Inv.
Grafton-Fraser Inc.	430 Topsail Road	St. John's	NL	Tip Top Tailors	Village Shop.Ctr(2006)Inc
Grafton-Fraser Inc.	Unit 2191-4700 Kingsway	Burnaby	BC	Tip Top Tailors	Ivanhoe Cambridge li Inc.
Grafton-Fraser Inc.	645 Lansdowne Street West	Peterborough	ON	Tip Top Tailors	20 Vic Management Inc.
Grafton-Fraser Inc.	945 Gardiners Road, Unit 39	Kingston	ON	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	1250 South Service Road	Mississauga	ON	Tip Top Tailors	Ivanhoe Cambridge li Inc.
Grafton-Fraser Inc.	2525 - 36th Street N.E. Unit#1100	Calgary	AB	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	375 St. Albert Trail.	St. Albert	AB	Tip Top Tailors	Primaris Management Inc.

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	5100 Erin Mills Parkway, Unit #103-5	Mississauga	ON	Tip Top Tailors	Ontario Pension Fund
Grafton-Fraser Inc.	100 Bayshore drive	Ottawa	ON	Tip Top Tailors	Ivanhoe Cambridge Inc.
Grafton-Fraser Inc.	5971 Signal Hill Centre SW	Calgary	AB	Tip Top Tailors	Riocan (Reit) West
Grafton-Fraser Inc.	7601 Weston Road, Unit 102a	Vaughan	ON	Tip Top Tailors	Rpsiff Colossus Centre
Grafton-Fraser Inc.	109th Street & Kingsway, PO Box 275a	Edmonton	AB	Tip Top Tailors	Oxford Group Div.Of Ormc
Grafton-Fraser Inc.	355 Hespeler Road, Unit 340 & 341	Cambridge	ON	Tip Top Tailors	Morguard Reit.
Grafton-Fraser Inc.	1225 St. Mary's Road, unit 34	Winnipeg	MB	Tip Top Tailors	Opb Realty (St.Vital) Inc
Grafton-Fraser Inc.	150 First Street	Orangeville	ON	Tip Top Tailors	Arcturus Lp Itf Reit On
Grafton-Fraser Inc.	5985 Rodeo Drive	Mississauga	ON	Tip Top Tailors	Orlando Corporation
Grafton-Fraser Inc.	700 West Pender Street	Vancouver	BC	Tip Top Tailors	Cadillac Fairview Corp.
Grafton-Fraser Inc.	261055 Crossiron Blvd. Unit #617	Calgary	AB	Tip Top Tailors	Ivanhoe Cambridge Inc.
Grafton-Fraser Inc.	1200 St. Laurent Blvd.	Ottawa	ON	Tip Top Tailors	713949 Ontario Ltd.
Grafton-Fraser Inc.	2566 Guildford Town Centre	Surrey	BC	Tip Top Tailors	Guildford Town Centre Lp
Grafton-Fraser Inc.	21 Mic Mac Blvd., Unit#248	Dartmouth	NS	Tip Top Tailors	Mic Mac Mall Ltd.Partner.
Grafton-Fraser Inc.	3401 Dufferin Street, Unit#118	Toronto	ON	Tip Top Tailors	Yorkdale S.C. Holdings In
Grafton-Fraser Inc.	1259 Barton Street East	Hamilton	ON	Tip Top Tailors	Triovest Realty Advis.Inc

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	7300 Market crossing	Vancouver	BC	Tip Top Tailors	Marine Promenade Prop.Inc
Grafton-Fraser Inc.	5111 Northland Dr. NW Unit #860	Calgary	AB	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	2929 Barnet Highway, Unit #1230	Port Coquitlam	BC	Tip Top Tailors	Pensionfund Realty Ltd.,
Grafton-Fraser Inc.	670 University Avenue	Charlottetown	PEI	Tip Top Tailors	Riokim Holdings (Pei)Inc
Grafton-Fraser Inc.	5000 Highway #7	Markham	ON	Tip Top Tailors	Ontrea Inc. (Markville)
Grafton-Fraser Inc.	25 Peel Centre Drive, Unit# 172	Bramalea	ON	Tip Top Tailors	Morguard Investments Ltd.
Grafton-Fraser Inc.	Unit 209 - 7001 Mumford Road	Halifax	NS	Tip Top Tailors	20 Vic Management Inc.
Grafton-Fraser Inc.	Unit 20 - 280 Guelph Street	Haiton Hills	ON	Tip Top Tailors	Georgetown Market Place C
Grafton-Fraser Inc.	9350 Yonge Street	Richmond Hill	ON	Tip Top Tailors	Hillcrest Mall Mgmnt Inc.
Grafton-Fraser Inc.	1644 Hillside Avenue	Victoria	BC	Tip Top Tailors	Hillside Centre Holdings
Grafton-Fraser Inc.	10025 102A Avenue Unit 211	Edmonton	AB	Tip Top Tailors	Opgi Mgmnt Lp O/A Oxf.Itf
Grafton-Fraser Inc.	1 Eglinton Square	Toronto	ON	Tip Top Tailors	Bentall Kennedy (Canada) LP
Grafton-Fraser Inc.	240 Leighland Avenue	Oakville	ON	Tip Top Tailors	Rmi-Itf- Oakville Place
Grafton-Fraser Inc.	300 Borough Drive	Scarborough	ON	Tip Top Tailors	Stc Holdings Inc.
Grafton-Fraser Inc.	1105 Wellington Road, Unit 5	London	ON	Tip Top Tailors	White Oaks Mgmnt Office
Grafton-Fraser Inc.	17600 Yonge Street, Box 56	Newmarket	ON	Tip Top Tailors	Opgi Mgmnt Lp O/A Oxf.Itf

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	689 Westville Road	New Glasgow	NS	Tip Top Tailors	Crombie Reit
Grafton-Fraser Inc.	11 East Point way	Saint John	NB	Tip Top Tailors	East Point Inc.
Grafton-Fraser Inc.	900 Dufferin Street, Unit 46	Toronto	ON	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	84 Lynden Road, Unit D15	Brantford	ON	Tip Top Tailors	Lynden Park Mall Limited
Grafton-Fraser Inc.	500 Rexdale Blvd., 1st Level	Toronto	ON	Tip Top Tailors	Avison Young Itf 2058790
Grafton-Fraser Inc.	2271 Harvey Avenue	Kelowna	BC	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	6455 MacLeod Trail SE, Unit 208	Calgary	AB	Tip Top Tailors	Ontrea Inc.
Grafton-Fraser Inc.	33-1555 Regent Avenue West	Winnipeg	MB	Tip Top Tailors	Kildonan Place S.C. Ltd.
Grafton-Fraser Inc.	25 The West Mall, Unit 244	Etobicoke	ON	Tip Top Tailors	Ontrea Inc.
Grafton-Fraser Inc.	3100 Howards Avenue, Unit B1	Windsor	ON	Tip Top Tailors	Devonshire Mall Limited
Grafton-Fraser Inc.	2325 Preston	Saskatoon	SK	Tip Top Tailors	Triovest Realty Advis.Inc
Grafton-Fraser Inc.	2261 Riverside Drive	Ottawa	ON	Tip Top Tailors	20 Vic Mgmt.Inc.
Grafton-Fraser Inc.	1912-8882- 170th Street	Edmonton	AB	Tip Top Tailors	West Edmonton Mall Prop.
Grafton-Fraser Inc.	1539 Kenaston Blvd., Unit 100	Winnipeg	MB	Tip Top Tailors	Calloway Reit- Winnipeg
Grafton-Fraser Inc.	100 Donna Drive, Bldg D Unit# 5	Sudbury	ON	Tip Top Tailors	Riocan Management Inc.
Grafton-Fraser Inc.	35-111 Street (@ 51st Avenue)	Edmonton	AB	Tip Top Tailors	Ivanhoe Cambridge Inc.

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	1 Water Street East	Cornwall	ON	Tip Top Tailors	Partners Reit
Grafton-Fraser Inc.	477 Paul Street	Moncton	NB	Tip Top Tailors	Cadillac Fairview Corp.
Grafton-Fraser Inc.	1st Avenue South, 201	Saskatoon	SK	Tip Top Tailors	Midtown Plaza Inc.
Grafton-Fraser Inc.	48 Kenmount Road	St. John's	NL	Tip Top Tailors	Crombie Developments Ltd.
Grafton-Fraser Inc.	420-1101 Champlain Street	Orleans	ON	Tip Top Tailors	Primaris Management Inc.
Grafton-Fraser Inc.	#35 100 Anderson Road SE	Calgary	AB	Tip Top Tailors	Oxford Pro. Retail Hold. In
Grafton-Fraser Inc.	489 Albert Street North	Regina	SK	Tip Top Tailors	Westdale Construction Co
Grafton-Fraser Inc.	1220 Steeles Avenue East, bldg 4-1	Milton	ON	Tip Top Tailors	First Milton Shopping Ctr
Grafton-Fraser Inc.	1355 Kingston Road, Level 2	Pickering	ON	Tip Top Tailors	Opb Realty(Pickering) Inc.
Grafton-Fraser Inc.	777 Guelph Line	Burlington	ON	Tip Top Tailors	Rmi-ltf-Burlington Mall
Grafton-Fraser Inc.	100 City Centre Drive	Mississauga	ON	Tip Top Tailors	Oxford In Trust For Sq. On
Grafton-Fraser Inc.	8882 - 170th Street, Unit #2303	Edmonton	AB	Tip Top Tailors	West Edmonton Mall Prop.
Grafton-Fraser Inc.	248-9855 Austin Road	Burnaby	BC	Tip Top Tailors	Shape Property Mgmnt Corp
Grafton-Fraser Inc.	Unit 1023 – 1800 Sheppard Ave. East	Toronto	ON	Tip Top Tailors	Fairmall Leaseholds Inc.
Grafton-Fraser Inc.	1 Bass Pro Mills Dr. Unit #160	Vaughan	ON	Tip Top Tailors	Ivanhoe Cambridge II Inc.
Grafton-Fraser Inc.	901-64th Ave N.E., Unit B16	Calgary	AB	Tip Top Tailors	Shape Property Mgmnt Corp

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	1658 Bedford Highway	Bedford	NS	Tip Top Tailors	Plaza Master G.P Limited
Grafton-Fraser Inc.	80 Great Lakes Drive, Unit 151	Brampton	ON	Tip Top Tailors	Rps Itf-Trinity Common
Grafton-Fraser Inc.	1570-18th Street & Richmond Ave. Unit 18 & 18a	Brandon	MB	Tip Top Tailors	Morguard Reit
Grafton-Fraser Inc.	2399 Parkdale Avenue West	Brockville	ON	Tip Top Tailors	Calloway Reit(Brockville)
Grafton-Fraser Inc.	620 Earl Grey Drive, Unit D1	Nepean	ON	Tip Top Tailors	Kanata Entertain.Hold Inc
Grafton-Fraser inc.	1380 London Rd	Sarnia	ON	Tip Top Tailors	Ks Lambton Mall Inc.
Grafton-Fraser Inc.	20-20070 Langley Bypass	Langley	BC	Tip Top Tailors	Riocan Property Services
Grafton-Fraser Inc.	6631 Island Highway N. Unit 121	Nanaimo	BC	Tip Top Tailors	Ivanhoe Cambridge li inc.
Grafton-Fraser Inc.	1500 Fisher Street	North Bay	ON	Tip Top Tailors	Mil Itf Hoopp Realty Inc.
Grafton-Fraser Inc.	1350 16th St. East, Unit B10 & 10A	Owen Sound	ON	Tip Top Tailors	Ks Heritage Place Inc.
Grafton-Fraser Inc.	800-15th Street East CRU#750	Prince Albert	SK	Tip Top Tailors	Stockyards(Pri n.Ab)Gp Ltd
Grafton-Fraser Inc.	3055 Massey Drive unit #175	Prince Georgre	BC	Tip Top Tailors	Morguard Real Estate
Grafton-Fraser Inc.	293 Bay Street	S. S. Marie	ON	Tip Top Tailors	Algoma Central Proper.Inc
Grafton-Fraser Inc.	800 Grand Lake Road	Sydney	NS	Tip Top Tailors	Mayflower Mall
Grafton-Fraser Inc.	Unit 16 - 1500 Riverside Drive	Timmins	ON	Tip Top Tailors	Riocan Management Inc.Itf
Grafton-Fraser Inc.	100 Train Yards, Unit C24	Ottawa	ON	George Richards	Controlex Corporation

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	8882-170th Street< Suite #2049	Edmonton	AB	George Richards	West Edmonton Mall Prop.
Grafton-Fraser Inc.	765 Exeter Road, South.	London	ON	George Richards	1865100 Ontario Ltd,
Grafton-Fraser Inc.	700-11100 51st Avenue	Edmonton	AB	George Richards	Ivanhoe Cambridge Inc.
Grafton-Fraser Inc.	130 Kingston Road East, Unit 3	Ajax	ON	George Richards	Riocan Reit(Ontario li)
Grafton-Fraser Inc.	7230 Market Crossing	Vancouver	BC	George Richards	Marine Promenade Prop.Inc
Grafton-Fraser Inc.	46 Pine Bush Road, Unti 4	Cambridge	ON	George Richards	Calloway Reit- Cambridge
Grafton-Fraser Inc.	35 William Kitchen Rd., Unit K2	Scarborough	ON	George Richards	First Gulf Coporation
Grafton-Fraser Inc.	28 Commerce Park Drive Unit A22	Barrie	ON	George Richards	Churchill Property Corp.
Grafton-Fraser Inc.	1295 Portage Ave	Winnipeg	MB	George Richards	73420 Manitoba Ltd.
Grafton-Fraser Inc.	2401B Millstream Rd. Unit #121	Victoria	BC	George Richards	Gwl Realty Adviso.Inc.Itf
Grafton-Fraser Inc.	3320-20th Ave NE Unit #105	Calgary	AB	George Richards	552861 Alberta Ltd.,
Grafton-Fraser Inc.	97 Dalton Ave Unit C10	Kingston	ON	George Richards	Kcap Kingston Inc.
Grafton-Fraser Inc.	185-2004 50 Ave	Red Deer	AB	George Richards	Rancho Realty (1975) Ltd.
Grafton-Fraser Inc.	3517 Wyecroft Road	Burlington	ON	George Richards	Rri Burloak Inc.
Grafton-Fraser Inc.	2045 Mayor Magrath Dr S	Lethbridge	AB	George Richards	Lethbridge College Ctr.Ld
Grafton-Fraser Inc.	135 Carry Dr SE	Medicine Hat	AB	George Richards	Primaris Management Inc.

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	1555 Talbot Road	Windsor	ON	George Richards	Optrust Retail Inc.
Grafton-Fraser Inc.	2339 HIGHWAY 97 N, #C410	Kelowna	BC	George Richards	Dilworth Shopping Ctr.Ltd
Grafton-Fraser Inc.	1259 Barton St. Bldg N#4	Hamilton	ON	George Richards	Triovest Realty Advis.Inc
Grafton-Fraser Inc.	1970 Dundas Street East, Unit #7	Mississauga	ON	George Richards	Riocan Holdings Inc.
Grafton-Fraser Inc.	695 Wilson Ave.	Toronto	ON	George Richards	First Long Weekend Dev.In
Grafton-Fraser Inc.	313 Eglinton Avenue West.	Toronto	ON	George Richards	Skpm-Hullmark Ave.Engl.Ld
Grafton-Fraser Inc.	5985 Rodeo Drive, Unit 2	Mississauga	ON	George Richards	Orlando Corporation
Grafton-Fraser Inc.	5971 Signal Hill Centre SW	Calgary	AB	George Richards	Riocan (Reit) West
Grafton-Fraser Inc.	7601 Weston Road, Unit 102a	Vaughan	ON	George Richards	RioCan Holdings Inc.
Grafton-Fraser Inc.	430 Topsail Road	St. John's	NL	George Richards	Village Shop.Ctr(2006)Inc
Grafton-Fraser Inc.	645 Lansdowne Street West	Peterborough	ON	George Richards	20 Vic Management Inc.
Grafton-Fraser Inc.	Highway 406 & Glenddale Ave, Unit 60A	St. Catharines	ON	George Richards	20 Vic Management Inc.
Grafton-Fraser Inc.	2530 Winston Park Drive, unit #1	Oakville	ON	Mr. Big & Tall	Purple Knights Dev.2000In
Grafton-Fraser Inc.	157 Trinity Drive	Moncton	NB	Mr. Big & Tall	Creit Management L.P
Grafton-Fraser Inc.	1719 Merivale Road, Unit 300	Ottawa	ON	Mr. Big & Tall	Riokim Holdings(Ont.I i)In
Grafton-Fraser Inc.	1300 Fanshawe Pk Rd.W., Unit G02	London	ON	Mr. Big & Tall	Creit Management

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	1569 Kenaston Blvd., Unit 100	Winnipeg	MB	Mr. Big & Tall	Calloway Reit- Winnipeg
Grafton-Fraser Inc.	100 Donna Drive, Bldg D, Unit 1	Sudbury	ON	Mr. Big & Tall	Riocan Management Inc.
Grafton-Fraser Inc.	8 Lebovic Avenue, Unit 4	Scarborough	ON	Mr. Big & Tall	The Eglinton Town Centre
Grafton-Fraser Inc.	1180 Steels Ave. E., Unit L4	Milton	ON	Mr. Big & Tall	First Gulf
Grafton-Fraser Inc.	11800 Sarcee Trail NW	Calgary	AB	Mr. Big & Tall	Rps-Beacon Hill
Grafton-Fraser Inc.	9417-137th Avenue NW	Edmonton	AB	Mr. Big & Tall	Anthem Kimco N.Town S.C
Grafton-Fraser Inc.	390 North Front Street, Unit #B1A	Belleville	ON	Mr. Big & Tall	Quinte Mall Limited
Grafton-Fraser Inc.	209 Chain Lake Drive	Halifax	NS	Mr. Big & Tall	Creit Mgmt.L.P.In Trust
Grafton-Fraser Inc.	475 West Hastings	Vancouver	BC	Mr. Big & Tall	Roy Rauser, Real Estate
Grafton-Fraser Inc.	15240-102A Avenue	Surrey	BC	Mr. Big & Tall	Roy Rauser, Real Estate
Grafton-Fraser Inc.	1054-2929 Barnet Hwy	Coquitlam	BC	Mr. Big & Tall	Pensionfund Realty Ltd.,
Grafton-Fraser Inc.	10208 Macleod Trail S.E.	Calgary	AB	Mr. Big & Tall	Henry M.Gutman,C. A.
Grafton-Fraser Inc.	17038-90th Avenue	Edmonton	AB	Mr. Big & Tall	Westgate Shopping Centre
Grafton-Fraser Inc.	550 University oark Drive	Regina	SK	Mr. Big & Tall	lcr Commercial Real Esta
Grafton-Fraser Inc.	810 Circle Dr. E.	Saskatoon	SK	Mr. Big & Tall	Crombie Reit
Grafton-Fraser Inc.	11 East Point way	Saint John	NB	Mr. Big & Tall	East Point Inc.

Company/ Subsidiary	Address	City	Province/ State	Holder	Name of Landlord ¹
Grafton-Fraser Inc.	44 Apex Rd.	Toronto	ON	Grafton-Fraser Inc. Warehouse	Stonehouse Group Inc.

2473304 ONTARIO INC.

2473304 Ontario Inc. does not own any real property.

Below is a list of all real property leased by 2473304 Ontario Inc (as lessee). Inventory is present at all of the locations listed below except 388 Applewood Crescent.

Company/ Subsidiary	Address	City	Province / State	Holder	Name of Landlord ¹
2473304 Ontario Inc.	388 Applewood Crescent	Vaughan	ON	2473304 Ontario Inc.	Tilzen Holdings Limited and Centura Real Estate Corp.
2473304 Ontario Inc.	331 Highway 89 RR #1	Cookstown	ON	2473304 Ontario Inc.	Riocan Holdings Inc.
2473304 Ontario Inc.	130-25 Benjamin Road	Waterloo	ON	2473304 Ontario Inc.	Sunlife Assurance company of Canada and St. Jacob's Countryside Inc.
2473304 Ontario Inc.	1201 Division Street	Kingston	ON	2473304 Ontario Inc.	KCAP Kingston Inc.
2473304 Ontario Inc.	1555 Talbot	Lasalle	ON	2473304 Ontario Inc.	Optrust retail Inc.
2473304 Ontario Inc.	1659 Kenaston	Winnipeg	MB	2473304 Ontario Inc.	Smartcentres Management Inc.
2473304 Ontario Inc.	7500 Lundy's Lane	Niagara Falls	ON	2473304 Ontario Inc.	Lundy's Lane Portfolio Inc.
2473304 Ontario Inc.	45 Lakeside Road	Knowlton	QC	2473304 Ontario Inc.	Co-enterprise Fiducie Lequin and 108227 Canada Inc.
2473304 Ontario Inc.	105 Rue Guindon Street	St. Sauveur des Monts	QC	2473304 Ontario Inc.	Factoreries St-Sauveur II, SEC
2473304 Ontario Inc.	4195 Dundas Street West	Toronto	ON	2473304 Ontario Inc.	1136974 Ontario Inc.
2473304 Ontario Inc.	3500 Fairview Street	Burlington	ON	2473304 Ontario Inc.	Landmark Shopping Centre Inc.

Company/ Subsidiary	Address	City	Province / State	Holder	Name of Landlord ¹
2473304 Ontario Inc.	735 Wonderland Road North	London	ON	2473304 Ontario Inc.	Dev-Lee Properties Ltd.
2473304 Ontario Inc.	1755 Pickering Way	Pickering	ON	2473304 Ontario Inc.	Pickering Brock Centre Inc. (Original lease was with Riocan)
2473304 Ontario Inc.	7771 Alderbridge Way	Richmond	BC	2473304 Ontario Inc.	ONNI 7771 Alderbridge Development Ltd.
2473304 Ontario Inc.	3200 Jean Yves Street	Kirkland	QC	2473304 Ontario Inc.	Riotrin Properties Inc. (RioCan is on the lease)
2473304 Ontario Inc.	790 Kanata Ave	Ottawa	ON	2473304 Ontario Inc.	Kanata Entertainment Holdings Inc.
2473304 Ontario Inc.	17725 Yonge Street	Newmarket	ON	2473304 Ontario Inc.	Yonge-Kingston Centre Inc.
2473304 Ontario Inc.	3187 Harwood Blvd	Hudson	QC	2473304 Ontario Inc.	Promenades Hudson Inc.
2473304 Ontario Inc.	290 North Service Road	Oakville	ON	2473304 Ontario Inc.	2725321 Canada Inc.
2473304 Ontario Inc.	526 Lawrence Ave West	Toronto	ON	2473304 Ontario Inc.	Lawrence Plaza Equities Inc.
2473304 Ontario Inc.	1667 Merivale Road	Merivale	ON	2473304 Ontario Inc.	Riocan Holdings Inc. 15156 Canada Inc.
2473304 Ontario Inc.	2002 Mer Bleue Road	Ottawa	ON	2473304 Ontario Inc.	Innes Shopping Centres Ltd.
2473304 Ontario Inc.	2748 Lougheed Highway	Port Coquitlam	BC	2473304 Ontario Inc.	Westco Financial Corp.
2473304 Ontario Inc.	196 McEwan Drive East	Bolton	ON	2473304 Ontario Inc.	2090950 Ontario Inc.
2473304 Ontario Inc.	805 Boyd Street	New Westminster	BC	2473304 Ontario Inc.	First Queensborough Shopping Centres Ltd.
2473304 Ontario Inc.	5875 Rodeo Drive	Mississauga	ON	2473304 Ontario Inc.	Orlando Corp.
2473304 Ontario Inc.	981 Wellington Road	London	ON	2473304 Ontario Inc.	Wellington Plaza Holdings Inc.
2473304 Ontario Inc.	10755 Leslie Street	Richmond Hill	ON	2473304 Ontario Inc.	Riotrin Properties Inc.

Company/ Subsidiary	Address	City	Province / State	Holder	Name of Landlord ¹
2473304 Ontario Inc.	201 Chain Lake Drive	Halifax	NS	2473304 Ontario Inc.	Plazacorp Property Holdings Inc. and 3088409 Nova Scotia Ltd.
2473304 Ontario Inc.	2000-1874 Scarile Street	Regina	SK	2473304 Ontario Inc.	Harvard Developments Inc.
2473304 Ontario Inc.	1400 Ottawa Street South	Kitchener	ON	2473304 Ontario Inc.	Voisin Developments Ltd.
2473304 Ontario Inc.	2505 Rue de L'Aulnaie	Mont Tremblant	QC	2473304 Ontario Inc.	Immeubles Marche Tremblant Inc.
2473304 Ontario Inc.	3110-3218 Boul de la Gare	Vaudreuil	QC	2473304 Ontario Inc.	9139-6366 Quebec Inc.
2473304 Ontario Inc.	9365 Boul Leduc - Suite 15	Brossard	QC	2473304 Ontario Inc.	4240073 Canada Inc., 9224-1892 Quebec Inc., and 9171-9922 Quebec Inc. represented by Carbonleo Real Estate Inc.
2473304 Ontario Inc.	10816 Macleod Trail S	Calgary	AB	2473304 Ontario Inc.	Weston Securities Ltd.

SCHEDULE 5.14**POST-CLOSING UNDERTAKINGS**

On or before the date that is sixty (60) days after the Effective Date (or such later date as the Agent may agree to in its sole discretion), the delivery of fully executed Blocked Account Agreements with respect to the following accounts at the following institutions:

1. Bank of Montreal

Borrower	Type of Account	Account Number
Grafton-Fraser Inc.	Main Account	0002-1207-975
Grafton-Fraser Inc.	Operating account	0002-1915-859
Grafton-Fraser Inc.	Operating account	0002-1915-867
Grafton-Fraser Inc.	Operating account	0002-1915-875
Grafton-Fraser Inc.	US\$ Operating account	0002-4691-263
2473304 Ontario Inc.	Main Account	0002-1883-682
2473304 Ontario Inc.	Expense Account	0002-1883-690
2473304 Ontario Inc.	Disbursements Account	0002-1883-703
2473304 Ontario Inc.	Payroll Account	0002-1883-711
2473304 Ontario Inc.	Vendors Account	0002-1883-738
2473304 Ontario Inc.	USD Account	0002-4671-940

2. Royal Bank of Canada

Borrower	Type of Account	Account Number
Grafton-Fraser Inc.	Store depository account	06012-177-597-2
2473304 Ontario Inc.	Store Depository Account (JNY)	00002-109-9423

3. Toronto Dominion Bank

Borrower	Type of Account	Account Number
Grafton-Fraser inc.	Store depository account	01020-0587031

SCHEDULE 6.1

EXISTING INDEBTEDNESS

GRAFTON-FRASER INC.

1. Term Loan Agreement (as defined herein).
2. Intercreditor Agreement (as defined herein).
3. *Intercompany loan from Grafton-Fraser Inc. to 2473304 Ontario Inc. in the amount of CAD \$4.1 million as of the end of January 2016.*

2473304 ONTARIO INC.

1. *Intercompany loan from Grafton-Fraser Inc. to 2473304 Ontario Inc. in the amount of CAD \$4.1 million as of the end of January 2016.*

CONSOLIDATED LIABILITIES

Consolidated Grafton-Fraser Inc. & Jones New York As At January 2nd, 2016

(C\$000s)

Current Liabilities

Trade and Other Payables	20,632
Capitalized Loan Fees	(275)
Deferred Revenue	1,929
Income Taxes Payable	692
Current Portion of Long-Term Debt	32,649
Current Portion of Long-Term Operating Loan	16,711
Total Current Liabilities	72,338

Non-Current Liabilities

Lease Obligations	341
Deferred Tax Liabilities	837
Deferred Lease Credits	6,626
Preferred Share Liability	22,250
Accrued Dividends	6,661
Total Non-Current Liabilities	36,715

TOTAL LIABILITIES

109,052

SCHEDULE 6.9

RESTRICTIVE AGREEMENTS

GRAFTON-FRASER INC.

1. Existing indebtedness related to the Term Loan Agreement and Intercreditor Agreement (both as defined herein).

2473304 ONTARIO INC.

None.

FORM OF BORROWING BASE REPORT

REPORT#: BBC-1

Date _____ Date _____

ABC
Client # 11_____

INVENTORY
Date

The person who executes this Borrowing Base Report on behalf of the Borrower hereby certifies that he/she is an officer of the Borrower and in such capacity is authorized to execute this Borrowing Base Report on behalf of the Borrower pursuant to a credit agreement dated as of _____, 20__ (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "Credit Agreement") between _____ (the "Borrower") and Canadian Imperial Bank of Commerce, in its capacity as Agent for the Lenders (the "Agent"). All capitalized terms not defined herein shall have the meaning ascribed to them in the Credit Agreement. The undersigned certifies, represents and warrants the correctness of this Borrowing Base Report.

DATE: _____

EXHIBIT B

FORM OF NOTICE OF BORROWING

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

[DATE]

CANADIAN IMPERIAL BANK OF COMMERCE
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

Attention: Collateral Analyst

BORROWING NOTICE

Gentlemen:

We refer to the credit agreement dated as of [DATE] (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Credit Agreement), between Grafton-Fraser Inc. and [●], as borrowers (the "**Borrowers**") and Canadian Imperial Bank of Commerce, as agent (the "**Agent**").

We hereby instruct and authorize the Agent to make advances to our disbursement account(s), subject to and in accordance with the terms and provisions of the Credit Agreement to the account numbers specified below and to charge the Borrower's loan account as Revolving Loans with each such advance(s).

The Borrower hereby requests an advance (the "**Advance**") be made under the Revolving Loans as follows:

A. the Borrowing Amount :

Prime Rate Loan (Cdn\$): _____

BA Borrowing _____ Contract Period _____

Base Rate Loan (US\$) _____

Letter of Credit/Credit Support*: _____

Additional Information: As per the attached Letter of Credit application

* Attach a copy of the Letter of Credit application duly completed by the Borrower in accordance with the provisions of the Credit Agreement.

B. the Drawdown Date: [DATE]

Notice requirements as stated in the Credit Agreement are:

- 10:00 AM (Toronto time) on the requested Drawdown Date for Prime Rate Loans or Base Rate Loans,
- 11:00 AM (Toronto time) 2 days in advance of the requested Drawdown Date for BA Loan

Proceeds of the Advance are to be directed as follows:

Bank Name: _____

Account Name: _____

Branch #: _____

Account Number: _____ CAD# _____

USD# _____

The Borrower hereby acknowledges that the Agent will make payments strictly on the basis of the account number furnished herein even if such account number identifies a party other than the name of the account listed above. In the event the above account number is incorrect, we hereby agree to be fully liable for any and all losses, costs, and expenses arising therefrom.

The Borrower hereby confirms as follows:

- (a) Each of the representations and warranties made by the Borrower in or pursuant to the Credit Agreement are true and correct on and as of the date hereof as if made on and as of the date hereof, except where such representation and warranty refers to a different date.
- (b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur after the making of the Advance(s) requested hereunder.
- (c) Except as may have been otherwise agreed to from time to time by the Agent and the Borrower in writing, after making the Advance(s) requested to be made by the Borrower hereunder, the aggregate Exposure will not exceed the lesser of (i) the Commitments, and (ii) an amount equal to the Borrowing Base.

DATED this day of _____, 20__

Yours truly,

Company

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION

Dated: _____, 20____

Reference is made to the credit agreement dated as of [●], 2015 (as amended, modified, supplemented and in effect from time to time, the "**Credit Agreement**"), among Grafton-Fraser inc. and [●] (together, the "**Borrowers**"), the Lenders named therein, and Canadian Imperial Bank of Commerce, as Agent (the "**Agent**"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

This Assignment and Transfer Agreement (the "**Assignment and Transfer Agreement**"), between [*Insert Name of Assignor*] (herein the "**Assignor**", as further defined and set forth on Schedule 1 hereto and made a part hereof) and [*Insert Name of Assignee*] (herein the "**Assignee**", as further defined and set forth on Schedule 1 hereto and made a part hereof) is dated as of Effective Date (as set forth on Schedule 1 hereto and made a part hereof).

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor (subject to Section 2 hereof), and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor (subject to Section 2 hereof), as of the Effective Date, an undivided interest (the "**Assigned Interest**") in and to all the Assignor's rights and obligations under the Credit Agreement, and only the financing facility contained in the Credit Agreement as is set forth on Schedule 1 (the "**Assigned Facility**"), in a principal amount for such Assigned Facility as set forth on Schedule 1, and all right, title and interest of the Assignor in and to the Loan Documents relating thereto.

2. The Assignor (i) represents and warrants that it is legally authorized to enter into this Assignment and Transfer Agreement, (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other instrument, document or agreement executed in conjunction therewith (collectively the "**Ancillary Documents**") or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any Collateral thereunder or any of the Ancillary Documents furnished pursuant thereto, other than that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any guarantor or the performance or observance by the Borrower or any guarantor of any of its respective obligations under the Credit Agreement or any of the Ancillary Documents furnished pursuant thereto.

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Transfer Agreement; (ii) confirms that it has received a copy of the Credit Agreement, together with the copies of the most recent financial statements of the Borrower, and such other documents and information as it has deemed appropriate to make its own credit analysis; (iii) agrees that it will, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (v) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. Following the execution of this Assignment and Transfer Agreement, such agreement will be delivered to the Agent for acceptance by it and the Borrower, effective as of the Effective Date.

5. Upon such acceptance, from and after the Effective Date, the Agent shall make all payments in respect of the assigned interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the Effective Date made by the Agent or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Transfer Agreement, have the rights and obligations of a Lender thereunder, and (ii) the Assignor shall, to the extent provided in this Assignment and Transfer Agreement, relinquish its rights and be released from its obligations under the Credit Agreement.

7. This Assignment and Transfer Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

8. This Assignment and Transfer Agreement may be executed in one or more counterparts by facsimile transmission, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Transfer Agreement to be executed by their respective duly authorized officers.

Accepted:¹

CANADIAN IMPERIAL BANK OF COMMERCE,
As Lender and Agent for the Lenders:

By: _____

Title: _____

By: _____

Title: _____

[NAME OF ASSIGNEE],
As Assignee

By: _____

Title: _____

By: _____

Title: _____

[NAME OF ASSIGNOR]
As Assignee

By: _____

Title: _____

By: _____

Title: _____

¹ To be added only if the consent of the Agent is required by the terms of the Credit Agreement.

Consented to:²

[BORROWER]

By: _____

Title: _____

² To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

Schedule 1 to Assignment and Transfer Agreement

Name of Assignor:•

Name of Assignee:•

Effective Date of Assignment: _____, 20____

Assigned Facility	Principal Assigned	Amount	Percentage Assigned of Facility (Shown as a percentage of aggregate original principal amount of all Lenders)
Revolving Loans	\$•		•%
Total:	<u>\$•</u>		

EXHIBIT D

FORM OF REPAYMENT NOTICE

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

CANADIAN IMPERIAL BANK OF COMMERCE, _____, 20_
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

Attention: Collateral Analyst

REPAYMENT NOTICE

Ladies/Gentlemen:

We refer to the Credit agreement dated [●], 2015 (the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement), between Grafton-Fraser Inc. and [●] (the "Borrowers"), Canadian Imperial Bank of Commerce, as agent (the "Agent"), and the Lenders party thereto (as "Lenders").

We hereby notify the Agent of our repayment of the Revolving Loans (as defined in the Credit Agreement), subject to and in accordance with the terms and provisions of the Credit Agreement in the amount of:

- A. The repayment amount:
Canadian Prime Loan: CAD\$ _____ Base Rate Loan: US\$ _____
LIBO Rate Loan: US\$ _____

BA Borrowing: CAD\$ _____
- B. The date of repayment*: _____

*If notice is received prior to 4:00 p.m. (Toronto time) on repayment date, otherwise the date of repayment will be the following business day.

Proceeds of the repayment are to be deposited to the account of Canadian Imperial Bank of Commerce as follows:

Bank Name:	CIBC, Main Branch Commerce Court, Toronto, ON
Account Name:	CIBC Asset Based Lending suspense account
Transit #:	00002
Account Number:	CAD 09-68617
	USD 05-38507

The herein mentioned repayment does not constitute, nor shall it be construed as, a termination or partial termination of the Credit Agreement or the Credit.

Yours truly,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[NAME OF ASSIGNOR]

As Assignee

By: _____

Title: _____

By: _____

Title: _____

Consented to:³

[BORROWER]

By: _____

Title: _____

³ To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

EXHIBIT E

FORM OF RESPONSIBLE OFFICER'S CERTIFICATE

[NTD: To discuss changes to this certificate]

TO: Canadian Imperial Bank of Commerce, as Agent

The undersigned, _____ **[TITLE of AUTHORIZED SIGNING OFFICER]**, of • (the "**Company**"), pursuant to Section 5.1 of the credit agreement dated as of [●], 2015, between, amongst others, Canadian Imperial Bank of Commerce, as Agent, and Grafton-Fraser Inc. and [●] (together, the "**Borrowers**") (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"), **DOES HEREBY CERTIFY** in [his/her] capacity as an authorized signing officer of the Borrower and not in [his/her] personal capacity that:

1. The financial statements attached hereto fairly and accurately represent the Company's financial condition at the end of the particular accounting period set out in such financial statements, as well as the Borrower's and its Subsidiaries' operating results during such accounting period, subject to year-end audit adjustments;

2. A review of such financial statements and of the activities of the Company and its Subsidiaries during the period covered by such financial statements has been made under my supervision has been made with a view to providing this Certificate;

3. During the accounting period set out in such financial statements:

(a) no Default or Event of Default under the Credit Agreement has occurred that is continuing,

(b) the Company is not aware of any event or circumstance which could reasonably have or be expected to have a Material Adverse Effect (as such term is defined in the Credit Agreement);

(c) the representation and warranties contained in the Credit Agreement are correct in all material respects on and as of the date hereof as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date and except to the extent that the Agent has been notified in writing by the Borrower that any representation or warranty is not correct and the Lenders have explicitly waived in writing compliance with such representation or warranty;

(d) Annex A hereto sets out all Subsidiaries and indicates, for each such Subsidiary, whether such Subsidiary is a Subsidiary and the date of the formation or acquisition of each Subsidiary was formed or acquired since the end of the previous calendar month; and

(e) no change in GAAP or in the application thereof has occurred since the date of the most recent audited annual financial statements of the Borrower delivered to the Agent **[Note to Draft: - If a change has occurred, specify the details of the change and its effect on the accompanying financial statements];**

4. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Responsible Officer's certificate on behalf of the Borrower as of the _____ day of _____, 20____.

By: _____
Name:
Title:

EXHIBIT F

EBITDA

(\$000s)	Fiscal Year 2015			
	Feb	Mar	Apr	Total
Cost of Inventory Liquidation	1.278	1.145	-	2.424
Reversal of Inventory Reserve	(0.318)	(0.478)	(0.093)	(0.889)
Total:	0.961	0.668	(0.093)	1.535

EXHIBIT A

FORM OF BORROWING BASE REPORT

CANADIAN IMPERIAL BANK OF COMMERCE
Borrowing Base Certificate

Date

REPORT#: BBC-1
Date

The following is an accurate and complete calculation of the Borrowing Base in Canadian Dollars at the above date.

ABC

Client # 11

ACCOUNTS RECEIVABLE
Date

INVENTORY
Date

1	TOTAL COLLATERAL (line 8 of previous report)	\$	-	\$	-
2	GROSS SALES (per attached report).....	(+)	\$	-	
3	CREDIT MEMOS (per attached report).....	(-)	\$	-	
4	INVENTORY CHANGE (per attached report)....	(+/-)			
5	(+/-) MISC. ADJUSTMENTS (back-up attached)..	(+/-)	\$	-	
6	NET COLLECTIONS (per attached report).....	(-)	\$	-	
7	DISCOUNTS ALLOWED (per attached report)....	(-)	\$	-	
8 A	TOTAL COLLATERAL per this report.....		\$	-	\$ -
B	US\$ Exchange Increase		\$	-	
O	TOTAL ELIGIBLE COLLATERAL (CAD\$) per this report		\$	-	
9 A	MONTHLY INELIGIBLES.....		\$	-	\$ -
B	OTHERS.....				
C	TOTAL INELIGIBLES.....	(-)	\$	-	\$ -
10	TOTAL ELIGIBLE COLLATERAL (line 8C minus 9C)		\$	-	\$ -
A	Accounts Receivable at XX% of Line 10	XX%	\$	-	
B	Inventory at lesser of XX% of the lower of cost or market or XX% of NOLV (XX%)	XX%			\$ -
11	TOTAL A/R AND INVENTORY COLLATERAL VALUE (line 10A + 10B)		\$	-	
12 A	RESERVES (per attached report)		\$	-	
B	OTHER		\$	-	
13	TOTAL BORROWING BASE (line 11 - 12A - 12B) (maximum \$XXMM CDN) (lessor of Borrowing Base formula and Max. Revolving Line of Credit)		\$	-	
14	LOAN BALANCE (Previous Report)....		\$	-	\$ -
15	ADVANCES	(+)	\$	-	\$ -
16	CHARGES (SEE BELOW)	(+/-)	\$	-	\$ -
17	NET COLLECTIONS.....	(-)	\$	-	\$ -
18	NON A/R COLLECTIONS.....	(-)	\$	-	\$ -
19 A	REVOLVER LOAN BALANCE per this report		\$	-	\$ -
B	LETTERS OF CREDIT		\$	-	\$ -
20 A	TOTAL LOAN AND LC EXPOSURE (19A + 19B)		\$	-	\$ -
B	USD EXPOSURE STATED IN CAD	1.XXXX	\$	-	\$ -
21	TOTAL REVOLVER LOAN BALANCE (20A + 20B)		\$	-	\$ -
22	Past Due Accounts Payable		\$	-	
23	EXCESS AVAILABILITY (line 13 minus 21 minus 22).....		\$	-	
24	SUPPRESSED AVAILABILITY		\$	-	

The person who executes this Borrowing Base Report on behalf of the Borrower hereby certifies that he/she is an officer of the Borrower and in such capacity is authorized to execute this Borrowing Base Report on behalf of the Borrower pursuant to a credit agreement dated as of _____, 20__ (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "Credit Agreement") between _____ (the "Borrower") and Canadian Imperial Bank of Commerce, in its capacity as Agent for the Lenders (the "Agent"). All capitalized terms not defined herein shall have the meaning ascribed to them in the Credit Agreement. The undersigned certifies, represents and warrants the correctness of this Borrowing Base Report.

AUTHORIZED SIGNATURE: _____

DATE: _____

EXHIBIT B

FORM OF NOTICE OF BORROWING

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

[DATE]

CANADIAN IMPERIAL BANK OF COMMERCE
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

Attention: Collateral Analyst

BORROWING NOTICE

Gentlemen:

We refer to the credit agreement dated as of February 12, 2016 (as amended, restated, supplemented, replaced or otherwise modified from time to time the "**Credit Agreement**"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Credit Agreement), between Grafton-Fraser Inc. and 2473304 Ontario Inc., as borrowers (the "**Borrowers**") and Canadian Imperial Bank of Commerce, as agent (the "**Agent**").

We hereby instruct and authorize the Agent to make advances to our disbursement account(s), subject to and in accordance with the terms and provisions of the Credit Agreement to the account numbers specified below and to charge the Borrower's loan account as Revolving Loans with each such advance(s).

The Borrower hereby requests an advance (the "**Advance**") be made under the Revolving Loans as follows:

A. the Borrowing Amount :

Prime Rate Loan (Cdn\$): _____

BA Borrowing _____ Contract Period _____

Base Rate Loan (US\$) _____

Letter of Credit/Credit Support*: _____

Additional Information: As per the attached Letter of Credit application

* Attach a copy of the Letter of Credit application duly completed by the Borrower in accordance with the provisions of the Credit Agreement.

B. the Drawdown Date: [DATE]

Notice requirements as stated in the Credit Agreement are:

- 10:00 AM (Toronto time) on the requested Drawdown Date for Prime Rate Loans or Base Rate Loans,
- 11:00 AM (Toronto time) 2 days in advance of the requested Drawdown Date for BA Loan

Proceeds of the Advance are to be directed as follows:

Bank Name: _____

Account Name: _____

Branch #: _____

Account Number: CAD# _____

USD# _____

The Borrower hereby acknowledges that the Agent will make payments strictly on the basis of the account number furnished herein even if such account number identifies a party other than the name of the account listed above. In the event the above account number is incorrect, we hereby agree to be fully liable for any and all losses, costs, and expenses arising therefrom.

The Borrower hereby confirms as follows:

- (a) Each of the representations and warranties made by the Borrower in or pursuant to the Credit Agreement are true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) on and as of the date hereof as if made on and as of the date hereof, except where such representation and warranty refers to a different date.
- (b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur after the making of the Advance(s) requested hereunder.
- (c) Except as may have been otherwise agreed to from time to time by the Agent and the Borrower in writing, after making the Advance(s) requested to be made by the Borrower hereunder, the aggregate Exposure will not exceed the lesser of (i) the Commitments, and (ii) an amount equal to the Borrowing Base.

DATED this day of _____, 20__

Yours truly,

Company

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION

Dated: _____, 20____

Reference is made to the credit agreement dated as of February 12, 2016 (as amended, modified, supplemented and in effect from time to time, the "**Credit Agreement**"), among Grafton-Fraser Inc. and 2473304 Ontario Inc. (together, the "**Borrowers**"), the Lenders named therein, and Canadian Imperial Bank of Commerce, as Agent (the "**Agent**"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

This Assignment and Transfer Agreement (the "**Assignment and Transfer Agreement**"), between **[Insert Name of Assignor]** (herein the "**Assignor**", as further defined and set forth on Schedule 1 hereto and made a part hereof) and **[Insert Name of Assignee]** (herein the "**Assignee**", as further defined and set forth on Schedule 1 hereto and made a part hereof) is dated as of Effective Date (as set forth on Schedule 1 hereto and made a part hereof).

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor (subject to Section 2 hereof), and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor (subject to Section 2 hereof), as of the Effective Date, an undivided interest (the "**Assigned Interest**") in and to all the Assignor's rights and obligations under the Credit Agreement, and only the financing facility contained in the Credit Agreement as is set forth on Schedule 1 (the "**Assigned Facility**"), in a principal amount for such Assigned Facility as set forth on Schedule 1, and all right, title and interest of the Assignor in and to the Loan Documents relating thereto.

2. The Assignor (i) represents and warrants that it is legally authorized to enter into this Assignment and Transfer Agreement, (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other instrument, document or agreement executed in conjunction therewith (collectively the "Ancillary Documents") or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any Collateral thereunder or any of the Ancillary Documents furnished pursuant thereto, other than that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any guarantor or the performance or observance by the Borrower or any guarantor of any of its respective obligations under the Credit Agreement or any of the Ancillary Documents furnished pursuant thereto.

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Transfer Agreement; (ii) confirms that it has received a copy of the Credit Agreement, together with the copies of the most recent financial statements of the Borrower, and such other documents and information as it has deemed appropriate to make its own credit analysis; (iii) agrees that it will, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (v) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the

obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. Following the execution of this Assignment and Transfer Agreement, such agreement will be delivered to the Agent for acceptance by it and the Borrower, effective as of the Effective Date.

5. Upon such acceptance, from and after the Effective Date, the Agent shall make all payments in respect of the assigned interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the Effective Date made by the Agent or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Transfer Agreement, have the rights and obligations of a Lender thereunder, and (ii) the Assignor shall, to the extent provided in this Assignment and Transfer Agreement, relinquish its rights and be released from its obligations under the Credit Agreement.

7. This Assignment and Transfer Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

8. This Assignment and Transfer Agreement may be executed in one or more counterparts by facsimile transmission, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Transfer Agreement to be executed by their respective duly authorized officers.

Accepted:³

CANADIAN IMPERIAL BANK OF COMMERCE,
As Lender and Agent for the Lenders:

By: _____

Title: _____

By: _____

Title: _____

[NAME OF ASSIGNEE],
As Assignee

By: _____

Title: _____

By: _____

Title: _____

[NAME OF ASSIGNOR]
As Assignee

By: _____

Title: _____

By: _____

Title: _____

³ To be added only if the consent of the Agent is required by the terms of the Credit Agreement.

Consented to:⁴

[BORROWER]

By: _____

Title: _____

⁴ To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

Schedule 1 to Assignment and Transfer Agreement

Name of Assignor:•

Name of Assignee:•

Effective Date of Assignment: _____, 20__

Assigned Facility	Principal Assigned	Amount	Percentage Assigned of Facility (Shown as a percentage of aggregate original principal amount of all Lenders)
Revolving Loans	\$•		•%
Total:	<u>\$•</u>		

EXHIBIT D

FORM OF REPAYMENT NOTICE

(Letter to be typed on Borrower's Letterhead, scan signed letter and email to CIBCABLCollateralAnalysts@cibc.com)

CANADIAN IMPERIAL BANK OF COMMERCE,
199 Bay Street, 4th Floor
Toronto, ON M5L 1A2

, 20_

Attention: Collateral Analyst

REPAYMENT NOTICE

Ladies/Gentlemen:

We refer to the Credit agreement dated February 12, 2016 (the "Credit Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement), between Grafton-Fraser Inc. and 2473304 Ontario Inc. (the "Borrowers"), Canadian Imperial Bank of Commerce, as agent (the "Agent"), and the Lenders party thereto (as "Lenders").

We hereby notify the Agent of our repayment of the Revolving Loans (as defined in the Credit Agreement), subject to and in accordance with the terms and provisions of the Credit Agreement in the amount of:

A. The repayment amount:

Canadian Prime Loan: CAD\$ _____ Base Rate Loan: US\$ _____
LIBO Rate Loan: US\$ _____

BA Borrowing: CAD\$ _____

B. The date of repayment*:

*If notice is received prior to 12:00 noon (Toronto time) on repayment date, otherwise the date of repayment will be the following business day.

Proceeds of the repayment are to be deposited to the account of Canadian Imperial Bank of Commerce as follows:

Bank Name:	CIBC, Main Branch Commerce Court, Toronto, ON
Account Name:	CIBC Asset Based Lending suspense account
Transit #:	00002
Account Number:	CAD 09-68617
	USD 05-38507

The herein mentioned repayment does not constitute, nor shall it be construed as, a termination or partial termination of the Credit Agreement or the Credit.

Yours truly,

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[NAME OF ASSIGNOR]

As Assignee

By: _____

Title: _____

By: _____

Title: _____

Consented to:⁵

[BORROWER]

By: _____

Title: _____

⁵ To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

EXHIBIT E

FORM OF RESPONSIBLE OFFICER'S CERTIFICATE

[NTD: To discuss changes to this certificate]

TO: Canadian Imperial Bank of Commerce, as Agent

The undersigned, _____ [TITLE of AUTHORIZED SIGNING OFFICER], of • (the "Company"), pursuant to Section 5.1 of the credit agreement dated as of February 12, 2016, between, amongst others, Canadian Imperial Bank of Commerce, as Agent, and Grafton-Fraser Inc. and 2473304 Ontario Inc. (together, the "Borrowers") (as amended, restated, supplemented, replaced or otherwise modified from time to time the "Credit Agreement"), **DOES HEREBY CERTIFY** in [his/her] capacity as an authorized signing officer of the Borrower and not in [his/her] personal capacity that:

1. The financial statements attached hereto fairly and accurately represent the Company's financial condition at the end of the particular accounting period set out in such financial statements, as well as the Borrower's and its Subsidiaries' operating results during such accounting period, subject to year-end audit adjustments;

2. A review of such financial statements and of the activities of the Company and its Subsidiaries during the period covered by such financial statements has been made under my supervision has been made with a view to providing this Certificate;

3. During the accounting period set out in such financial statements:

(a) no Default or Event of Default under the Credit Agreement has occurred that is continuing,

(b) the Company is not aware of any event or circumstance which could reasonably have or be expected to have a Material Adverse Effect (as such term is defined in the Credit Agreement);

(c) the representation and warranties contained in the Credit Agreement are correct in all material respects on and as of the date hereof as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date and except to the extent that the Agent has been notified in writing by the Borrower that any representation or warranty is not correct and the Lenders have explicitly waived in writing compliance with such representation or warranty;

(d) Annex A hereto sets out all Subsidiaries and indicates, for each such Subsidiary, whether such Subsidiary is a Subsidiary and the date of the formation or acquisition of each Subsidiary was formed or acquired since the end of the previous Fiscal Month;

(e) no change in GAAP or in the application thereof has occurred since the date of the most recent audited annual financial statements of the Borrower delivered to the Agent [Note to Draft: - If a change has occurred, specify the details of the change and its effect on the accompanying financial statements];

(f) all basic rent payments due and payable under each lease of real property (under which a Credit Party is a tenant) have been paid; and

(g) all royalty payments due and payable under all licensing agreements have been paid.

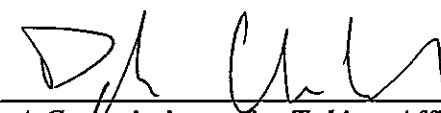
4. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Credit Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Responsible Officer's certificate on behalf of the Borrower as of the _____ day of _____, 20__.

By: _____
Name:
Title:

Tab B

THIS IS EXHIBIT "B"
referred to in the Affidavit of
Mark Sun sworn before me this
6th day of June 2016



A Commissioner for Taking Affidavits
Dylan Chechle

GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT is dated February 12, 2016

GRANTED TO: **CANADIAN IMPERIAL BANK OF COMMERCE,**
as Agent for itself and on behalf of the other present and future Lenders, the
Issuing Banks, and the F/X Bank under the Credit Agreement (as defined below)
199 Bay Street, 4th Floor
Toronto, Ontario
M5L 1A2

(in such capacity and any successor thereto, the **Agent**)

GRANTED BY: **2473304 ONTARIO INC.**
388 Applewood Crescent
Vaughan, ON
L4K 4B4
(including its successors and permitted assigns, the **Debtor**)

SECTION 1 - GRANT OF SECURITY INTEREST

1.1 Security Interest

As a general and continuing security for the payment and performance of all Obligations (as defined below), the Debtor, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, assigns and transfers to the Agent, and grants to the Agent a continuing security interest in, all of the property, assets and undertakings of the Debtor, now owned or hereafter acquired by or on behalf of the Debtor, wherever located, including, without limitation, all of the following (collectively, the **Collateral**):

(a) Accounts Receivable

All debts, book debts, accounts, accounts receivable, claims, demands, moneys and choses in action whatsoever, including, without limitation, claims against the Crown and claims under insurance policies, which are now owned by or are due, owing or accruing due to the Debtor or which may hereafter be owned by or become due, owing or accruing due to the Debtor together with all contracts, securities, bills, notes, lien notes, judgments, chattel mortgages, mortgages and all other rights, benefits and documents now or hereafter taken, vested in or held by the Debtor in respect of or as security for the same and the full benefit and advantage thereof, and all rights of action or claims which the Debtor now has or may at any time hereafter have against any Person in respect thereof (all of the foregoing being herein collectively called the **Accounts Receivable**);

(b) Inventory

All Inventory of whatever kind now or hereafter owned by the Debtor or in which the Debtor now or hereinafter has an interest or right of any kind, and all accessions thereto and products thereof, including, without limitation, all goods, merchandise, raw materials, goods in process, finished goods, packaging and packing material and other tangible personal property now or hereafter held for sale, lease, rental or resale or that are to be furnished or have been furnished under a contract of service or that are to be used or consumed in the business of the Debtor (all of the foregoing being herein collectively called the **Inventory**);

(c) **Equipment**

All goods now or hereafter owned by the Debtor which are not inventory or consumer goods (as defined in the *Personal Property Security Act* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as amended from time to time, collectively, the **PPSA**), including, without limitation, all fixtures, equipment, machinery, tools, furniture, vehicles and other tangible personal property (all of the foregoing being herein collectively called the **Equipment**);

(d) **Deposit Accounts**

Any and all depositary accounts maintained at any financial institution into which proceeds of the Collateral or proceeds of loans or other extensions of credit under the Credit Agreement may be deposited from time to time;

(e) **Chattel Paper, Instruments, etc.**

All chattel paper, instruments, warehouse receipts, bills of lading and other documents of title, whether negotiable or non-negotiable, shares, stock, warrants, bonds, debentures, debenture stock, securities and other financial assets, now or hereafter owned by the Debtor;

(f) **Securities and Securities Accounts**

All securities and securities accounts of the Debtor, including, without limitation, those listed in Schedule A hereto, and all of the credit balances, security entitlements and other financial assets and items or property standing to the credit of the Debtor from time to time in any securities accounts;

(g) **Intangibles and Other Intellectual Property**

All intangibles now or hereafter owned by the Debtor, including, without limitation, all contractual rights, goodwill, patents, trademarks, trade names, copyrights, industrial designs and other industrial or intellectual property or rights therein, including, without limitation, the intellectual property rights described in Schedule B hereto;

(h) **Books and Accounts, etc.**

With respect to the personal property described in paragraphs (a) to (g) above, inclusive, all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating thereto and all contracts, securities, instruments and other rights and benefits in respect thereof, including, without limitation, computer programs, disks, tapes and related electronic data processing media and the rights of the Debtor to receive the same from third persons, which now are or may hereafter become vested in the Debtor;

(i) **Other Property**

The uncalled capital, money, rights, bills of exchange, negotiable and non-negotiable instruments, judgments and securities not otherwise described in paragraphs (a) to (h) above, inclusive;

(j) **Replacements, etc.**

With respect to the personal property described in paragraphs (a) to (i) above, inclusive, all substitutions and replacements thereof, increases, additions and accessions thereto and any interest of the Debtor therein;

(k) **Proceeds**

With respect to the personal property described in paragraphs (a) to (j) above, inclusive, personal property in any form or fixtures or crops derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds, including without limitation, all indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits arising from, or connection with, such property and the present and continuing right to claim for, collect and receive any one and all of the said indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits; and

(l) **Taxes, Assessments etc.**

All reimbursements of taxes, rates, assessments, levies, surtaxes and any other impositions which may be assessed on or payable in respect of any of the property described in paragraphs (a) to (k) above, inclusive.

1.2 **Definitions and Interpretation**

In this General Security Agreement (the **Security Agreement**):

- (a) Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement;
- (b) Terms used herein and defined in the PPSA shall have the same meanings as in the PPSA unless the context otherwise requires;
- (c) **Credit Agreement** means that certain credit agreement dated as of February 12, 2016, entered into by and among Grafton-Fraser Inc. and 2473304 Ontario Inc., as borrowers, the guarantors party thereto, as guarantors (the **Guarantors**), Canadian Imperial Bank of Commerce and the other financial institutions from time to time parties thereto, as lenders, and the Agent, as may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time (the **Credit Agreement**);
- (d) **Event of Default** has the meaning ascribed to it in the Credit Agreement;
- (e) **Guarantee** means that certain guarantee dated as of the date hereof entered into by the Debtor and 2473304 Ontario Inc., as guarantors, in favour of the Agent, as the same may be amended, supplemented, revised, restated, replaced or otherwise modified from time to time;
- (f) **Issuing Banks** has the meaning ascribed to it in the Credit Agreement;
- (g) **Lenders** has the meaning ascribed to it in the Credit Agreement;
- (h) **Loan Documents** has the meaning ascribed to it in the Credit Agreement;
- (i) **Obligations** has the meaning ascribed to it in the Credit Agreement;
- (j) **PPSA** has the meaning set forth in Section 1.1(c);
- (k) **STA** means the *Securities Transfer Act, 2006* (Ontario) or, to the extent applicable, similar legislation of any other jurisdiction, as such legislation may be amended from time to time;

- (l) Any reference to Collateral shall, unless the context otherwise requires, refer to the Collateral or any part thereof;
- (m) The grant of the security interest herein provided for shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment of the Collateral in favour of the Agent;
- (n) The term **security interest** shall include, without limitation, a fixed mortgage, hypothecation, pledge, charge and assignment; and
- (o) The term **encumbrance** shall include, without limitation, a security interest, lien, claim, charge, deemed trust or encumbrance of any kind whatsoever.

1.3 Leases

The last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, shall be excepted from the security interest hereby granted and shall not form part of the Collateral, but the Debtor shall stand possessed of such one day remaining upon trust to assign and dispose of the same as the Agent or any assignee of the Agent in respect of such lease, sub-lease or agreement shall direct. If any such lease, sub-lease or agreement therefor contains a provision which provides in effect that such lease, sub-lease or agreement may not be assigned, sub-leased, charged or encumbered without the leave, license, consent or approval of the lessor, the application of the security interest created hereby to any such lease, sub-lease or agreement shall be conditional upon such leave, license, consent or approval having been obtained.

1.4 Debtor Remains Liable

Notwithstanding anything herein to the contrary:

- (a) the Debtor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed;
- (b) the exercise by the Agent of any of the rights or remedies hereunder shall not release the Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral; and
- (c) the Agent shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall the Agent be obligated to perform any of the obligations or duties of the Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

1.5 Scope of Security Interest

- (a) To the extent that the creation of the security interest created hereby would constitute a breach or permit the acceleration or termination of any agreement, right, licence or permit of the Debtor (or, with respect to any governmental license or permit held by the Debtor, contravene applicable law) which constitutes Collateral (each, a **Restricted Asset**), the security interest created hereunder shall not attach to the Restricted Asset, but the Debtor shall, subject to paragraph (b) below, hold its interest in the Restricted Asset in trust for the Agent, provided that, until the security interest created hereby has become enforceable, the Debtor shall be entitled to deal with, receive the benefits of and receive and retain all proceeds arising under or in connection with the Restricted Asset;

- (b) To the extent that the creation of the trust in paragraph (a) above would constitute a breach or permit the acceleration or termination of any Restricted Asset, the security interest created hereunder shall not attach to the Restricted Asset, but the security interest created hereby will constitute a trust created in favour of the Agent, the Lenders, the F/X Bank and the Issuing Banks pursuant to which the Debtor shall hold as trustee its interest in all proceeds arising under or in connection with the Restricted Asset in trust for the Agent, provided that until the security interest created hereby has become enforceable, the Debtor shall be entitled to receive all such proceeds;
- (c) The security interest created hereby in trademarks, trademark applications and other trademark rights shall not constitute an assignment if such assignment would impair the validity or enforceability of any such trademarks, trademark applications or other trademark rights; and
- (d) The security interest created hereby shall not extend to consumer goods.

1.6 Attachment, Perfection, Possession and Control

- (a) The Debtor acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Agent (other than after-acquired Collateral) and (iii) it has not agreed to postpone the time of attachment of the security interest hereby created.
- (b) Except as permitted by the Credit Agreement or otherwise by the provisions of this Agreement, no Person, has any option, warrant, call, commitment, conversion, right of exchange or other agreement or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement to acquire any right or interest in the Collateral.
- (c) Upon request from the Agent, the Debtor shall promptly execute and deliver, from time to time, at its own expense, amendments to this Security Agreement and its schedules or additional Security Agreements or schedules as may be required by the Agent in order to preserve, protect and perfect its security interest in the Collateral.
- (d) If the Debtor acquires Collateral consisting of chattel paper, instruments or negotiable documents of title (collectively, **Negotiable Collateral**), the Debtor shall, upon the request of the Agent, deliver to the Agent the Negotiable Collateral in accordance with the Credit Agreement and shall, at the request of the Agent (i) endorse the same for transfer in blank or as the Agent may direct, (ii) cause any transfer to be registered wherever, in the opinion of the Agent, such registration may be required or advisable, and (iii) deliver to the Agent any and all consents or other documents which may be necessary or desirable to transfer the Negotiable Collateral.

SECTION 2 - REPRESENTATIONS AND WARRANTIES

The Debtor represents and warrants to and in favour of the Agent that all of the representations and warranties given by the Debtor in the Credit Agreement are true and accurate.

SECTION 3 - COVENANTS OF DEBTOR

The Debtor covenants and agrees with the Agent that it shall comply with all covenants given by the Debtor in the Credit Agreement.

SECTION 4 - COLLECTION OF PROCEEDS

4.1 Payments to the Agent

The Debtor shall:

- (a) collect and enforce payment of all Accounts Receivable in the ordinary course of business (except as provided for in Section 4.2 below) and shall dispose of and receive payment for all Inventory which is ordinarily disposed of in the Debtor's business;
- (b) upon the occurrence and during the continuance of an Event of Default, receive and hold in trust for the Agent, all payments on or instruments received in respect of the Collateral, all rights by way of suretyship or guarantee which the Debtor now has or may hereafter acquire to enforce payment of the Collateral and all rights in the nature of a security interest whereby the Debtor may satisfy any Collateral out of property, and all non-cash proceeds of any such collection, disposition or realization of any of the Collateral shall be subject to the security interest hereby created;
- (c) upon the occurrence and during the continuance of an Event of Default, endorse to the Agent and forthwith deliver to it all such payments and instruments in the form received by the Debtor; and
- (d) upon the occurrence and during the continuance of an Event of Default, forthwith deliver to the Agent all property in the Debtor's possession or hereafter coming into its possession through enforcement of any such rights.

4.2 Account Debtors

Upon the occurrence and during the continuance of an Event of Default, the Agent may notify an account debtor or obligors under any Account Receivable of the assignment of the Account Receivable to the Agent and require such person to make payment to the Agent in respect of any of the Accounts Receivable and the Agent may hold all amounts acquired or received from any such account debtors or obligors, together with income on such amounts, as part of the Collateral and as security for the Obligations.

SECTION 5 - DEFAULT

5.1 Defaults

The Obligations secured by this Security Agreement shall be immediately due and payable in full and the security hereby constituted shall become enforceable upon the occurrence and during the continuance of an Event of Default.

SECTION 6 - REMEDIES ON DEFAULT

If the security hereby constituted becomes enforceable, the Agent shall have, in addition to any other rights, remedies and powers which it may have at law, in equity or under the PPSA, the following rights, remedies and powers:

6.1 Power of Entry

The Debtor shall forthwith upon demand assemble and deliver to the Agent possession of all of the Collateral at such place or places as may be specified by the Agent. The Agent may take such steps as it considers necessary or desirable to obtain possession of all or any part of the Collateral and, to that end, the Debtor agrees that the Agent, its servants or agents or Receiver (as defined below) may enter

upon lands and premises where the Collateral may be found for the purpose of taking possession of and/or removing the Collateral or any part thereof. In the event of the Agent taking possession of the Collateral, or any part thereof, the Agent shall have the right to maintain the same upon the premises on which the Collateral may then be situate. The Agent may, in a reasonable manner, take such action or do such things as to render any Equipment unusable.

6.2 Power of Sale

The Agent may sell, lease or otherwise dispose of all or any part of the Collateral, as a whole or in separate parcels, by public auction, private tender or by private contract, with or without notice, except as otherwise required by Applicable Law, with or without advertising and without any other formality, all of which are hereby waived by the Debtor. Such sale, lease or disposition shall be on such terms and conditions as to credit and otherwise and as to upset or reserve bid or price as to the Agent, in its sole discretion, may seem advantageous. If such sale, transfer or disposition is made on credit or part cash and part credit, the Agent need only credit against the Obligations the actual cash received at the time of the disposition. Any payments made pursuant to any credit granted at the time of the disposition shall be credited against the Obligations as they are received. The Agent may buy in or rescind or vary any contract for sale of all or any of the Collateral and may resell without being answerable for any loss occasioned thereby. Any such sale, lease or disposition may take place whether or not the Agent has taken possession of the Collateral. The Agent may, before any such sale, lease or disposition, perform any commercially reasonable repair, processing or preparation for disposition and the amount so paid or expended shall be deemed advanced to the Debtor by the Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.3 Validity of Sale

No person dealing with the Agent or its servants or agents shall be concerned to inquire whether the security hereby constituted has become enforceable, whether the powers which the Agent is purporting to exercise have become exercisable, whether any money remains due on the security of the Collateral, as to the necessity or expedience of the stipulations and conditions subject to which any sale, lease or disposition shall be made, otherwise as to the propriety or regularity of any sale or any other dealing by the Agent with the Collateral or to see to the application of any money paid to the Agent. In the absence of fraud on the part of such persons, such dealings shall be deemed, so far as regards the safety and protection of such persons, to be within the powers hereby conferred and to be valid and effective accordingly.

6.4 Receiver-Manager

The Agent may, in addition to any other rights it may have, appoint by instrument in writing a receiver, interim receiver, or receiver and manager (all of which are herein called a **Receiver**) of all or any part of the Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Agent has under this Security Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by law, act as and for all purposes shall be deemed to be the agent of the Debtor and the Agent shall not be responsible for any act or default of any such Receiver. The Agent may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Agent. A court need not appoint, ratify the appointment by the Agent of or otherwise supervise in any manner the actions of any Receiver. Upon the Debtor receiving notice from the Agent of the taking of possession of the Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of the Debtor with respect to the Collateral shall cease, unless specifically continued by the written consent of the Agent.

6.5 Carrying on Business

The Agent may carry on, or concur in the carrying on of, all or any part of the business or undertaking of the Debtor, may, to the exclusion of all others, including the Debtor, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by the Debtor and may use all or any of the tools, machinery, equipment and intangibles of the Debtor for such time as the Agent sees fit, free of charge, to carry on the business of the Debtor and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

6.6 Dealing with Collateral

The Agent may seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable, all of which without notice to the Debtor except as otherwise required by any Applicable Law. The Agent may demand, sue for and receive any Accounts Receivable with or without notice to the Debtor, give such receipts, discharges and extensions of time and make such compromises in respect of any Accounts Receivable which may, in the Agent's absolute discretion, seem bad or doubtful. The Agent may charge on its own behalf and pay to others, sums for costs and expenses incurred including, without limitation, legal fees and expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Collateral and in connection with the protection and enforcement of the rights of the Agent hereunder, including, without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to the Debtor by the Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.7 Retention of Collateral

Upon notice to the Debtor and subject to any obligation to dispose of any of the Collateral, as provided in the PPSA, the Agent may elect to retain all or any part of the Collateral in satisfaction of the Obligations or any of them.

6.8 Pay Encumbrances

The Agent may pay any encumbrance that may exist or be threatened against the Collateral. In addition, the Agent may borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business or undertaking of the Debtor and may grant further security interests in the Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to the Debtor by the Agent, shall become part of the Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Obligations or any part thereof and shall be secured by this Security Agreement.

6.9 Application of Payments Against Obligations

Any and all payments made in respect of the Obligations from time to time and moneys realized on the Collateral may be applied to such part or parts of the Obligations as the Agent may see fit. The Agent shall, at all times and from time to time, have the right to change any appropriation as it may see fit. Any insurance moneys received by the Agent pursuant to this Security Agreement may, at the option of the Agent, be applied to rebuilding or repairing the Collateral or be applied against the Obligations in accordance with the provisions of this Section.

6.10 Set-Off

The Obligations will be paid by the Debtor without regard to any equities between the Debtor and the Agent or any right of set-off or cross-claim. Any indebtedness owing by the Agent to the Debtor may be set off and applied by the Agent against the Obligations at any time or from time to time either before or after maturity, without demand upon or notice to anyone.

6.11 Deficiency

If the proceeds of the realization of the Collateral are insufficient to repay the Agent all moneys due to it, the Debtor shall forthwith pay or cause to be paid to the Agent such deficiency.

6.12 Agent Not Liable

Except as otherwise provided in this Security Agreement, the Agent shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Agent, the Debtor or any other Person, firm or corporation in respect of the Collateral and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure, including, without limitation, resulting from the negligence of the Agent or any of its officers, servants, agents, solicitors, attorneys, Receivers or otherwise. Except as otherwise provided in this Security Agreement, neither the Agent nor its officers, servants, agents or Receivers shall be liable by reason of any entry into possession of the Collateral or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence in the carrying on or occupation of the business or undertaking of the Debtor as provided in Section 6.5 above or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence.

6.13 Extensions of Time

The Agent may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Collateral to third parties and otherwise deal or fail to deal with the Debtor, debtors of the Debtor, guarantors, sureties and others and with the Collateral and other securities as the Agent may see fit, all without prejudice to the liability of the Debtor to the Agent or the Agent's rights and powers under this Security Agreement.

6.14 Rights in Addition

The rights and powers conferred by this Section 6 are in supplement of and in addition to and not in substitution for any other rights or powers the Agent may have from time to time under this Security Agreement or under Applicable Law. The Agent may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of the Agent shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination.

SECTION 7 - DEALING WITH COLLATERAL BY THE DEBTOR

7.1 Sale of Inventory

So long as no Event of Default is continuing, the Debtor may, in the ordinary course of its business and on customary trade terms, lease or sell items of Inventory, so that the purchaser thereof takes title clear of the security interest hereby created. If such sale or lease results in an Account Receivable, such Account Receivable shall be subject to the security interest hereby created.

SECTION 8 - GENERAL

8.1 Security in Addition

The security hereby constituted is not in substitution for any other security for the Obligations or for any other agreement between the parties creating a security interest in all or part of the Collateral, whether heretofore or hereafter made, and such security and such agreements shall be deemed to be continued and not affected hereby unless expressly provided to the contrary in writing and signed by the Agent and the Debtor. The taking of any action or proceedings or refraining from so doing, or any other dealing, with any other security for the Obligations or any part thereof, shall not release or affect the security interest created by this Security Agreement and the taking of the security interest hereby created or any proceedings hereunder for the realization of the security interest hereby created shall not release or affect any other security held by the Agent for the repayment of or performance of the Obligations.

8.2 Waiver

Any waiver of a breach by the Debtor of any of the terms or provisions of this Security Agreement or of an Event of Default must be in writing to be effective against and bind the Agent. No such waiver by the Agent shall extend to or be taken in any manner to affect any subsequent breach or Event of Default or the rights of the Agent arising therefrom.

8.3 Further Assurances

The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as the Agent may reasonably require in order to give effect to the provisions and purposes of this Security Agreement, including, without limitation, in respect of the Agent's enforcement of the security and its realization on the Collateral, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of the Agent in the Collateral pursuant to this Security Agreement through registration, control or otherwise and for obtaining control of any Collateral that consists of securities, securities entitlements or future contracts in the manner provided under the PPSA or the STA, as applicable. The Debtor hereby constitutes and appoints, effective upon the occurrence and during the continuance of an Event of Default, the manager or acting manager of the Agent at its above address, or any Receiver appointed by a court or the Agent as provided herein, the true and lawful attorney of the Debtor irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things which the Debtor has herein agreed to do, make or execute or which may be required by the Agent or a Receiver to give effect to this Security Agreement, with the right to use the name of the Debtor whenever and wherever it may be deemed necessary or expedient. The Debtor hereby authorizes the Agent to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to the Debtor.

8.4 No Merger

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Debtor to make payment of or satisfy the Obligations. The acceptance of any payment or alternate security shall not constitute or create any novation and the taking of a judgment or judgments under any of the covenants herein contained shall not operate as a merger of such covenants.

8.5 Continuing Security Interest and Discharge

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until discharge of the security interest created hereby in accordance with

Section 8.11 hereof, notwithstanding any dealing between the Agent and the Debtor or any guarantor in respect of the Obligations or any release, exchange, non-perfection, amendment, waiver, consent or departure from or in respect of any or all of the terms or provision of any security held for the Obligations.

8.6 Governing Law

This Security Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8.7 Security Interest Effective Immediately

Neither the execution or registration of this Security Agreement nor any partial advances by the Agent shall bind the Agent to advance any other amounts to the Debtor. The parties intend the security interest created hereby to attach and take effect forthwith upon execution of this Security Agreement by the Debtor and the Debtor acknowledges that it has received a copy of this Security Agreement.

8.8 Invalidity

In the event that any term or provision of this Security Agreement shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Security Agreement shall be unaffected thereby and shall be valid and enforceable to the fullest extent permitted by law.

8.9 Binding Effect

All rights of the Agent hereunder shall enure to the benefit of its successors and assigns and all obligations of the Debtor hereunder shall bind the Debtor and its heirs, executors, administrators, legal personal representatives, successors and assigns.

8.10 Paramountcy

Except as limited below, in the event that any provisions of this Security Agreement contradict, are inconsistent with or are otherwise incapable of being construed in harmony with the provisions (including any rights, remedies and covenants therein) of the Credit Agreement, the provisions of the Credit Agreement shall take precedence over those contained in this Security Agreement. Notwithstanding the foregoing, in the event that provisions related to or affecting the creation, validity or enforcement of the security created under this Security Agreement are contained in the Credit Agreement, if any, contradict or are otherwise incapable of being construed in harmony with the provisions of this Security Agreement, such provisions of this Security Agreement shall take precedence over those contained in the Credit Agreement.

8.11 Discharge

The security interest created hereby shall be discharged on the Termination Date. Upon discharge of the security interest created hereby and at the request and expense of the Debtor, the Agent shall execute and deliver to the Debtor such releases and discharges as the Debtor may reasonably require.

8.12 Notices

Any notices, directions or other communications provided for in this Security Agreement shall be in writing and given in accordance with the provisions of the Credit Agreement.

8.13 Headings, etc.

The division of this Security Agreement into Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

8.14 Counterparts

This Security Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument, any party may execute this Security Agreement by signing any counterpart of it and may communicate such signing by facsimile or otherwise.

8.15 Copies of Agreement and Financing Statements

The Debtor acknowledges receipt of a copy of this Security Agreement and waives the right to receive a copy of all present and future financing statements and financing change statements filed in connection with the security interests created hereby and all related verification statements.

[Signature page follows]

IN WITNESS WHEREOF the Debtor has duly executed this Security Agreement as of the date first above-written.

2473304 ONTARIO INC.

Per: _____

Name:

Title:

Mark G. Sun
Vice President & CFO
Grafton-Fraser Inc.

CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent

Per: _____



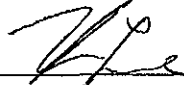
Name:

Italo Fortino

Title:

Authorized Signatory

Per: _____



Name:

Kyle Lane

Title:

Authorized Signatory

Schedule A



Securities





Issuer	Number and type of Shares	Percentage of equity interests owned
2473304 Ontario Inc.	10 Common Shares	100%





Schedule B
Intellectual Property








Trademarks

A. Registrations

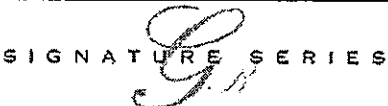





Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA628,156	AUTOFLEX
Grafton-Fraser Inc.	TMA414,940	BRITCHES
Grafton-Fraser Inc.	TMA444,217	BRITCHES <small>CLASSIC SPORT</small> BRITCHES CLASSIC SPORT DESIGN (NEW/BLUE)
Grafton-Fraser Inc.	TMA505,684	BRITCHES GREAT OUTDOOR COLLECTION
Grafton-Fraser Inc.	TMA527,329	BRITCHES GREAT OUTDOORS
Grafton-Fraser Inc.	TMA316,448	 CRICKETEER & DESIGN
Grafton-Fraser Inc.	TMA627,469	GEORGE RICHARDS BIG & TALL
Grafton-Fraser Inc.	TMA627,344	GEORGE RICHARDS BIG & TALL MENSWEAR
Grafton-Fraser Inc.	TMA647,678	HARWICK
Grafton-Fraser Inc.	TMA647,864	KINGSPORT
Grafton-Fraser Inc.	TMA690,431	LIVE LARGE BIG & TALL
Grafton-Fraser Inc.	TMA330,679	MADISON CLUB
Grafton-Fraser Inc.	TMA782,213	MR. BIG & TALL
Grafton-Fraser Inc.	TMA288,827	NABOUR STORES
Grafton-Fraser Inc.	TMA536,123	 NORTEK & DESIGN
Grafton-Fraser Inc.	TMA802,497	NXT Nortek

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA664,981	PROFILO
Grafton-Fraser Inc.	TMA782,214	SIGNATURE CARRINGTON
Grafton-Fraser Inc.	TMA561,639	STONEHOUSE
Grafton-Fraser Inc.	TMA529,956	THE SUIT EXCHANGE
Grafton-Fraser Inc.	TMA315,357	AVENUE RD.
Grafton-Fraser Inc.	TMA382,405	BACK COUNTRY
Grafton-Fraser Inc.	TMA570,678	 BOSA DESIGN BUSINESS CASUAL
Grafton-Fraser Inc.	TMA500,577	
Grafton-Fraser Inc.	TMA307,085	 CARRINGTON & DESIGN CLUB VIP GOLD
Grafton-Fraser Inc.	TMA425,742	
Grafton-Fraser Inc.	TMA316,499	CRICKETEER
Grafton-Fraser Inc.	TMA528,236	 EARTH CANADA CREW & DESIGN
Grafton-Fraser Inc.	TMA512,455	EARTH CREW
Grafton-Fraser Inc.	TMA383,683	EDITIONS BY GEORGE RICHARDS
Grafton-Fraser Inc.	TMA321,831	FOREIGN TRADE
Grafton-Fraser Inc.	TMA463,336	FRIDAY WEAR
Grafton-Fraser Inc.	TMA306,621	 GEORGE RICHARDS KINGSIZE CLOTHIERS FOR BIG AND TALL & DESIGN
Grafton-Fraser Inc.	TMA311,494	GIANNI MARCO

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMA337,868	GRAFTON & Co. GRAFTON & CO. DESIGN
Grafton-Fraser Inc.	TMA286,808	 GRAFTON CLUB SINCE 1853 & DESIGN
Grafton-Fraser Inc.	TMA386,509	 INTERNATIONAL ZONES & DESIGN
Grafton-Fraser Inc.	TMA383,393	INTERNATIONAL ZONES
Grafton-Fraser Inc.	TMA231,809	LEISHMAN
Grafton-Fraser Inc.	UCA11495	LEISHMAN CLOTHES
Grafton-Fraser Inc.	TMA325,166	MR. BIG 'N TALL
Grafton-Fraser Inc.	TMA169,081	NEW EDITIONS
Grafton-Fraser Inc.	TMA443,255	NORTHWOODS
Grafton-Fraser Inc.	TMA593,967	PROFILO CLASSICS
Grafton-Fraser Inc.	TMA490,828	REPP LTD.
Grafton-Fraser Inc.	TMA472,738	 REPP LTD. BIG & TALL (DESIGN)
Grafton-Fraser Inc.	TMA433,896	Signature Series SIGNATURE SERIES DESIGN
Grafton-Fraser Inc.	TMA228,964	TIP TOP
Grafton-Fraser Inc.	TMA500,592	 TIP TOP BUSINESS CASUAL & DESIGN
Grafton-Fraser Inc.	TMA576,108	TIP TOP CLASSICS

Owner	Registration Number	Trademark
Grafton-Fraser Inc.	TMDA28783	TIP TOP TAILORS
Grafton-Fraser Inc.	TMA438,656	 TIP TOP TAILORS & DESIGN
Grafton-Fraser Inc.	TMA500,590	 TIP TOP VÊTEMENTS D'AFFAIRES DÉCONTRACTÉS & DESIGN
Grafton-Fraser Inc.	TMA293,888	 TIP TOP WAREHOUSE OUTLET & DESIGN
Grafton-Fraser Inc.	TMA429,886	 TT & CO. SPORT & DESIGN
Grafton-Fraser Inc.	TMA511,103	TT & COMPANY
Grafton-Fraser Inc.	TMA511,104	 company TT & COMPANY & DESIGN
Grafton-Fraser Inc.	TMA441,932	UP COUNTRY
Grafton-Fraser Inc.	TMA894056	GEORGE RICHARDS XL
Grafton-Fraser Inc.	TMA894054	MR. BIG AND TALL XL
Grafton-Fraser Inc.	5559375 (Japan)	GRAFTON 1853 & Design  GRAFTON 1853
Grafton-Fraser Inc.	45-0045464 (South Korea)	GRAFTON 1853 & Design  GRAFTON 1853

B. Applications

Owner	Application Number ³	Trademark
Grafton-Fraser Inc.	1,524,143	 SIGNATURE SERIES GR SIGNATURE SERIES DESIGN
Grafton-Fraser Inc.	1,522,461	 GRAFTON 1853 GRAFTON 1853 & DESIGN
Grafton-Fraser Inc.	1,655,859	GRAFTON 1853 LIQUID WOOL
Grafton-Fraser Inc.	10666131 (China) Class 25 (wares)	GRAFTON 1853 & Design  GRAFTON 1853
Grafton-Fraser Inc.	10666130 (China) Classes: 35 (services)	GRAFTON 1853 & Design  GRAFTON 1853
Grafton-Fraser Inc.	85442756 (US)	GEORGE RICHARDS XL
Grafton-Fraser Inc.	85441968 (US)	 SIGNATURE SERIES GR SIGNATURE SERIES (STYLIZED LETTERS)
Grafton-Fraser Inc.	85440851 (US)	 GRAFTON 1853 GRAFTON 1853 AND DESIGN
Grafton-Fraser Inc.	85441590 (US)	MR. BIG AND TALL XL

DEED OF HYPOTHEC

ON THIS tenth (10th) day of February, year two thousand and sixteen (2016).

BEFORE Mtre Julie Doan, the undersigned Notary practising in the Province of Quebec in the City of Montreal.

APPEARED:

CANADIAN IMPERIAL BANK OF COMMERCE, a Canadian chartered bank, having an office at 595 Bay Street, Suite 500, Toronto, Ontario M5G 2C2, herein acting and represented by Arnold Cohen,, its duly authorized representative, duly authorized pursuant to a power of attorney dated the eighth (8th) day of February, year two thousand and sixteen (2016), a certified copy or duplicate copy of which is annexed hereto after having been acknowledged as true and signed for identification by the said representative with and in the presence of the undersigned Notary and having a notice of address at the Register of Personal and Movable Real Rights under number 044946,

(Party of the First Part)

AND

2473304 ONTARIO INC., a corporation duly incorporated under the laws of the Province of Ontario, having its registered or head office and domicile (within the meaning of such term in the *Civil Code of Québec*) at 388 Applewood Crescent, Vaughan, Ontario L4K 4B4, herein represented by Margarita Altankova, its authorized representative, duly authorized for the purposes hereof by virtue of a power of attorney dated the fourth (4th) day of February, year two thousand and sixteen (2016), and a resolution of its sole shareholder dated the eighteenth (18th) day of January, year two thousand and sixteen (2016), a certified copy or duplicate copy of which is annexed hereto after having been acknowledged as true and signed for identification by the said representative with and in the presence of the undersigned Notary,

(Party of the Second Part)

WHEREAS certain credit facilities have been made available to Grafton-Fraser Inc. (GFI) and 2473304 Ontario Inc. (collectively with GFI, the **Borrowers**, and each individually, a **Borrower**) upon the terms and conditions contained in a credit agreement dated on or about February 12, 2016 among the Borrowers, as borrowers, certain affiliates and subsidiaries of the Borrowers, as guarantors, Canadian Imperial Bank of Commerce (CIBC) and the other financial institutions from time to time parties thereto, as lenders (the **Lenders**), and CIBC, as agent for itself and on behalf of the other present and future Lenders, the Issuing Banks, and the F/X Bank (in such capacity, including its successors and assigns in such capacity, the **Agent**) (as same has been and may further be amended, modified, supplemented, restated, extended, renewed or superseded from time to time, the **Credit Agreement**);

WHEREAS as continuing collateral security for, *inter alia*, the payment and performance of the Secured Obligations (as hereinafter defined), the Grantor has agreed to execute and deliver the present deed (as amended, supplemented, restated, replaced or otherwise modified from time to time, **this Deed**) in favour of the Attorney;

AND WHEREAS all necessary corporate proceedings and resolutions have been duly taken and passed by the Grantor and all other actions have been taken by the Grantor to authorize the execution of this Deed, in conformity therewith.

WHEREFORE, the parties hereto have agreed as follows in the presence of the said Notary:

1. **DEFINITIONS**

The following words and phrases, wherever used in this Deed shall, unless there be something in the context inconsistent therewith, have the following meanings:

- 1.1 **Attorney** means the Party of the First Part, in its capacity (i) as Lender and as Agent for the other present and future Secured Parties under the Credit Agreement and (ii) in its capacity as the hypothecary representative for all present and future Secured Parties pursuant to Article 2692 of the Civil Code and includes any successor or assign thereof in such capacity;
- 1.2 **Civil Code** means the *Civil Code of Québec*, as amended from time to time;
- 1.3 **Claims** shall have the meaning ascribed to it in paragraph 3.2.1;
- 1.4 **Credit Agreement** shall have the meaning ascribed to it in the recitals above;
- 1.5 **Deed** shall have the meaning ascribed to it in the recitals above;
- 1.6 **Event of Default** means the occurrence of an Event of Default (as such term is defined in the Credit Agreement);
- 1.7 **Equipment** shall have the meaning ascribed to it in paragraph 3.2.5 hereof;
- 1.8 **Grantor** means the Party of the Second Part and includes any successor thereto;
- 1.9 **Hypothecated Property** shall have the meaning ascribed to it in paragraph 3 hereof;
- 1.10 **Inventory** shall have the meaning ascribed to it in paragraph 3.2.2 hereof;
- 1.11 **Receiver** shall have the meaning ascribed to it in subparagraph 7.4.12 hereof;
- 1.12 **Secured Obligations** shall have the meaning ascribed to it in Section 2 hereof; and

- 1.13 **Secured Parties** means the Agent, the Lenders, the Issuing Banks and the F/X Bank (and a **Secured Party** refers to any one of them);

Capitalized terms used herein and not otherwise defined herein (including in the recitals above) shall have the meanings ascribed to them in the Credit Agreement.

2. **SECURED OBLIGATIONS**

- 2.1 The hypothec constituted by this Deed (hereinafter referred to as the **Hypothec**) secures the payment and performance of the following obligations (hereinafter collectively referred to as the **Secured Obligations**):

- 2.1.1 the prompt payment as and when due and payable, of all amounts in principal, interest, fees, costs or otherwise now or hereafter owing by the Grantor to the Secured Parties under the Credit Agreement and all other Loan Documents;
- 2.1.2 the strict payment and performance by the Grantor of all agreements, warranties, representations, covenants, conditions and obligations (whether actual or contingent, whether now existing or hereafter arising, whether or not for the payment of money, and including, without limitation, any obligation or liability to pay damages) pursuant to or arising under this Deed and the other Loan Documents to which it is a party (including, without limitation, all Obligations), as same may be amended, restated, replaced, supplemented or otherwise modified from time to time; and
- 2.1.3 the prompt payment, as and when due and payable, of all other amounts payable hereunder (including by way of guarantee or indemnity) and the legitimate costs that the Attorney may incur to recover the Secured Obligations and preserve the Hypothecated Property (as such expression is hereinbelow defined), as well as the performance of any other obligations arising from this Deed.

3. **HYPOTHEC**

3.1 **Amount of Hypothec**

To secure the performance of the Secured Obligations, the Grantor hereby hypothecates in favour of the Attorney the property described in paragraph 3 hereof for the following amounts:

- 3.1.1 an amount of SEVENTY MILLION CANADIAN DOLLARS (Cdn\$70,000,000);
- 3.1.2 plus interest on such amount, calculated from the date of this Deed and compounded annually, at the rate of twenty-five percent (25%) per annum.

3.2 Description of Hypothecated Property

The Grantor's Hypothec constituted by this Deed charges the following movable property of the Grantor, present and future, corporeal and incorporeal, of whatsoever nature and kind and wheresoever situated (all such property of the Grantor is hereinafter collectively called the **Hypothecated Property**):

- 3.2.1 the universality of the Grantor's right, title and interest from time to time in and to all present and future claims directly or indirectly held or owned by the Grantor (collectively, the **Claims**), including, without limitation :
 - 3.2.1.1 all accounts receivable, Accounts, book accounts, book debts, loan receivables including principal, interest and accessories, debts, claims, customer accounts, all sums of money, claims arising from or related to deposits made into any savings or other accounts (including, without limitation, securities accounts) maintained with any bank or other financial institution together with all interest paid or payable thereon, rentals, revenues, income, receivables, sale proceeds, judgments, bills of exchange, bonds, shares, stocks, warrants, debentures, notes, negotiable instruments, certificates of deposit, letters of credit or guarantee, promissory notes, rebates, refunds, amounts owing by or claimable from the Crown or any departments, agents or agencies thereof and any other amounts or demands of every nature and kind howsoever arising, which are now or become hereafter due or owing to the Grantor, whether or not such Claims are certain and determinate, invoiced, liquid, exigible, litigious or constituted by a negotiable title or other instrument or draft and whether or not secured; and
 - 3.2.1.2 all movable and immovable security present or future including all legal or conventional hypothecs and other security held from time to time by the Grantor under or in connection with the foregoing;
- 3.2.2 the universality of all the present and future goods, wares, materials, supplies, merchandise, products, work in process and stock-in-trade and on hand, present and future, purchased, acquired or produced for the purpose of consumption, processing, preparation or sale in the ordinary course of business or for the purpose of consumption in the production of the Grantor's products or to become a part of the Grantor's products, and all goods, wares, materials and merchandise, present and future, used in or procured for the packing and storing of such goods.

wares, materials, supplies, merchandise, products, work in process, stock-in-trade and on hand (collectively referred to herein as the Inventory) and all rights to the warehouse receipts, bills of lading and other title documents relating to the Inventory;

- 3.2.3 all patents, trademarks and other intellectual property rights, including, without limitation, the intellectual property rights described in Schedule A hereof (collectively, the Intellectual Property Rights);
- 3.2.4 all of the securities of the Grantor contemplated herein, including, without limitation, those described in Schedule A hereof;
- 3.2.5 the universality of all of the equipment, machinery, tools, motor vehicles, additions, appliances and accessories now owned or held or at any time hereafter acquired or held by the Grantor, wheresoever situate, whether or not the same form an integral part of the immovable properties of the Grantor or are incorporated therein or attached or joined thereto (collectively referred to herein as the Equipment);
- 3.2.6 all books, accounts, invoices, deeds, documents, writings, letters, papers, security certificates and other records in any form evidencing or relating to the property described in paragraphs 3.2.1 to 3.2.5 inclusive and all contracts, securities, instruments and other rights, and benefits in respect thereof, including, without limitation, computer programs, disks, tapes and related electronic data processing media and the rights of the Grantor to receive the same from third persons, which now are or may hereafter become vested in the Grantor;
- 3.2.7 all uncalled capital, money, rights, bills of exchange, negotiable and non-negotiable instruments, judgments and securities not otherwise described in paragraphs 3.2.1 to 3.2.6 inclusive;
- 3.2.8 all substitutions and replacements of any of the property described in paragraphs 3.2.1 to 3.2.7 inclusive, all increases, additions and accessions thereto and any interest of the Grantor therein;
- 3.2.9 all proceeds of any of the property described in paragraphs 3.2.1 to 3.2.8 inclusive, including, without limitation, movable property in any form or fixtures or crops derived directly or indirectly from any dealing with such property or that indemnifies or compensates for loss of or damage to such property or proceeds therefrom destroyed or damaged and proceeds of proceeds whether of the same type, class or kind as the original proceeds, including without limitation, all indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and

profits arising from, or in connection with, such property and the present and continuing right to claim for, collect and receive any one and all of the said indemnities and insurance proceeds, expropriation proceeds, rents, income, fruits, revenues, issues and profits; and

- 3.2.10 all reimbursements of taxes, rates, assessments, levies, surtaxes and any other impositions which may be assessed on or payable in respect of any of the property described in paragraphs 3.2.1 to 3.2.9 inclusive.

The whole of the above without the Attorney being required to register or re-register any notice whatsoever, the object of the Hypothec being the universality of the present and future movable property described above.

3.3 Interpretation

The parties hereto acknowledge and confirm that:

- 3.3.1 the Hypothec created on the Hypothecated Property pursuant to this Deed is not and shall not be construed as a floating hypothec within the meaning of Articles 2715 et seq. of the Civil Code;
- 3.3.2 the Hypothec constituted by this Deed will remain in full force and effect for the full amount stipulated in Section 3 hereof until such time as the Secured Obligations are fully extinguished or until such time as the Attorney no longer requires the benefit of the Hypothec constituted by this Deed. The Hypothec, security and rights hereby created in favour of the Attorney will not be extinguished or novated by any payments made to or amounts received by the Attorney, directly or indirectly, from the Grantor or any other party or as a result of any insurance indemnities arising from loss or damage to any of the Hypothecated Property or by reason of the collection of any Claims hypothecated hereunder; and
- 3.3.3 should the Secured Obligations at any time be fully extinguished without an express discharge of the Hypothec constituted by this Deed having been granted, and should any new Secured Obligations arise, the security created hereunder will secure such new Secured Obligations in the same manner and to the same extent as if there had never occurred an extinction of any of the Secured Obligations and the Grantor is and shall remain obligated under the provisions hereof. The Grantor shall be deemed to have obligated itself for such new Secured Obligations pursuant to the provisions hereof and the Hypothec constituted by this Deed shall secure such new Secured Obligations as contemplated by Article 2797 of the Civil Code.

4. GRANTOR'S UNDERTAKINGS

4.1 Intellectual Property Rights

The Grantor will promptly, following demand from time to time by the Attorney, authorize, execute and deliver any and all agreements, instruments, documents and papers that the Attorney may reasonably request to evidence each Hypothec in any of the Intellectual Property Rights.

4.2 Transformation

The Grantor may not, without the Attorney's prior written consent, transform any of the movables located, or deemed located, in the Province of Quebec forming part of the Hypothecated Property either by incorporating such movables into an immovable or by combining or mixing them with other movables so as to form new property, unless such immovables or new property are themselves subject or made subject to the Hypothec hereby granted or to any other security interest granted in relation to the Loan Documents or unless such transformation is made in the ordinary course of operating an enterprise of the Grantor that is engaged in the business of manufacturing or transforming property. In no event, however, may the Grantor transform any such property where such transformation would result in the Attorney's security or rights hereunder, including in particular their rank, being diminished.

In the event of any such transformation, even without the Attorney's authorization, the Grantor (who shall not be relieved of the default resulting from the failure to obtain authorization) shall immediately inform the Attorney of the details of such transformation and shall in particular provide the Attorney with a description of the property thereby affected, the name and address of the owner of the property that may result therefrom and the address where such property is located.

4.3 Fees

The Grantor agrees to indemnify and save harmless the Attorney from and against any and all claims, losses and liabilities arising out of or resulting from this Hypothec (including, without limitation, enforcement of this Hypothec), except claims, losses or liabilities resulting from the Attorney's gross or intentional fault.

The Grantor will upon demand pay to the Attorney the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which the Attorney may incur in connection with (i) the administration of this Hypothec, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Hypothecated Property, (iii) the exercise or enforcement of any of the rights or remedies of the Attorney hereunder or (iv) the failure by the Grantor to perform or observe any of the provisions hereunder.

4.4 Registration

The Grantor shall cooperate with the Attorney, to the extent deemed necessary or useful by the Attorney, in order that the Attorney may effect the registrations required for publication of the creation, renewal, extension

or preservation of the Hypothec created in its favour pursuant to this Deed, or for the exercise of its hypothecary rights, as the case may be. Without limiting the generality of the foregoing, the Grantor shall do, make and execute, at its own expense, all such deeds, documents and things as may be necessary or advisable, in the opinion of the Attorney acting reasonably, in order that a valid and enforceable hypothec be created and maintained on any property forming part of the Hypothecated Property as of the execution of this Deed or at any time in the future.

5. [Intentionally Deleted.]

6. PROVISIONS APPLICABLE TO THE HYPOTHECS ON CLAIMS

The following provisions apply to Claims owed to the Grantor and hypothecated in favour of the Attorney.

6.1 Collection

The Grantor shall have authority to collect payments of interest and repayments of principal made on its Claims included in the Hypothecated Property hypothecated in favour of the Attorney pursuant to this Deed, as they fall due. The Attorney may withdraw this authorization by written notice upon the occurrence of an Event of Default which is continuing. Notwithstanding the foregoing, the Attorney may after the occurrence of an Event of Default which is continuing take all necessary steps to set up the Hypothec constituted by this Deed against the debtors of the hypothecated Claims. In such event, the Grantor undertakes to remit to the Attorney, upon request, all titles, documents, registers, invoices and accounts evidencing its Claims or relating thereto, whatever the nature of their medium and whatever the form in which they are accessible, whether written, graphic, taped, filmed, computerized, or other.

Any payment received by the Grantor on account of any hypothecated claim other than pursuant to the foregoing authorization shall be received for the Attorney's account, shall not entitle the Grantor to the amounts collected and shall be kept separate from the Grantor's other property at all times and remitted forthwith by the Grantor to the Attorney without compensation.

6.2 Attorney's Rights

The Attorney shall not be obliged to exercise its rights to the hypothecated Claims or to ensure their recovery from the debtors, whether by legal proceedings or otherwise. Should the Attorney decide to collect the hypothecated Claims in accordance with paragraph 6, it shall be at liberty to negotiate such arrangements as it deems appropriate with the debtors or third parties, to enter into agreements with them with respect to the Claims and any security securing the Claims, and even to waive the Claims and such security, the whole without the Grantor's consent or intervention, and the Attorney shall not thereby incur any liability toward or be accountable to the Grantor, save in respect of its gross negligence or intentional fault. Unless the Grantor so requests in writing, the Attorney shall not be obliged to inform the Grantor of any irregularity in the payment of any amounts due on the Claims. Apart from its obligation to remit to the Grantor any sums collected over and above the amount of the Secured Obligations in principal, interest and costs, the Attorney shall not be accountable to the Grantor with respect to the status of the collections made or any

transactions and arrangements entered into unless the Attorney has been grossly negligent or perpetuated an intentional or gross fault.

6.3 Financial Administration Act (Canada)

Where any of the Grantor's Claims are subject to the provisions of the *Financial Administration Act* (Canada), the Grantor hereby sells, assigns and transfers the same absolutely to the Attorney so that, upon a withdrawal of authorization as referred to in paragraph 6 hereof, the Attorney shall be free to complete the formalities required to make such assignment fully enforceable.

7. DEFAULT

7.1 Events of Default

The Grantor shall be considered in default hereunder upon the occurrence of an Event of Default under the Credit Agreement and for so long as such Event of Default is continuing.

7.2 Effects

Without limiting its rights, at any time and at its discretion, to demand payment of any Secured Obligations payable on demand and without prejudice to any rights and remedies which it has pursuant to agreements with the Grantor or at law (in particular with respect to hypothecated Claims), the Attorney, upon the occurrence of an Event of Default which is continuing, may demand immediate and full payment of the amounts owing on account of the Secured Obligations, which shall forthwith become due and payable, and exercise, at its discretion, without restriction and without any prior notice other than such notices as are required by law, any rights and remedies which it has pursuant to this Deed or at law, including, in particular, the following hypothecary rights:

- taking of possession for purposes of administration;
- taking in payment;
- sale by the Attorney;
- sale by judicial authority.

7.3 Exercise of Rights

In the event that the security hereby constituted shall have become enforceable following the occurrence of an Event of Default which is continuing, the Attorney may proceed to realize the security created by this Deed and to exercise any right, recourse or remedy of the Attorney and of the Secured Parties under this Deed or provided for by law, including without limitation any of the hypothecary rights and recourses provided for under the Civil Code.

The obligation of the Attorney to commence or continue any act, action or proceeding under this Deed shall, at the option of the Attorney, be conditional upon the Secured Parties furnishing, when required, sufficient funds to commence or continue such action or proceeding and indemnify reasonably satisfactory to the Attorney.

7.4 Attorney's Rights

Irrespective of the particular remedy exercised by the Attorney in the event of an Event of a Default which is continuing, the following provisions shall apply in addition to any provisions that may by law apply in the circumstances, the Grantor expressly agreeing thereto:

- 7.4.1 the Grantor undertakes to assemble its Hypothecated Property upon request; in addition, the Attorney may, but shall not be obliged to, conduct a verification of the Hypothecated Property, assemble or move any of such property or take proceedings or do or take any act or action in relation to the Hypothecated Property that it may deem advisable, the whole at the Grantor's expense;
- 7.4.2 the Attorney may, in addition, at its discretion and at the Grantor's expense, whether after the Grantor has surrendered the Hypothecated Property and until the Attorney has exercised the hypothecary right which it intends to exercise, or whether after the Attorney has chosen to take possession of the Hypothecated Property for purposes of administration, use or operate all or any part of the Hypothecated Property (without being obliged to make such property productive), change the destination of or alienate such property by onerous title (except for Hypothecated Property of little value) or charge such property with a hypothec or other real right, enter into or renew any leases for such amounts and on such terms and conditions as the Attorney deems appropriate, make any repairs or renovations or undertake or complete any work;
- 7.4.3 the Attorney may, in the exercise of its rights, renounce any right relating to the Hypothecated Property belonging to the Grantor, even where no valuable consideration is received;
- 7.4.4 the Attorney shall not be bound to make an inventory, take out insurance or furnish other security to secure the performance of its obligations;
- 7.4.5 the Attorney may, at its discretion, take possession, through its officers, agents or mandataries, of all or any part of the Hypothecated Property, with full power to carry on, manage and conduct the Grantor's business relating to its Hypothecated Property; the Attorney may use the Hypothecated Property or any information that it obtains by reason of its administration for its own benefit;
- 7.4.6 the Grantor, through its officers and directors, shall forthwith execute such documents and transfers as may be necessary to place the Attorney in legal possession of its Hypothecated Property and the business of the Grantor in connection therewith, and thereupon all the powers, functions, rights and

privileges of each and every one of the directors and officers of the Grantor shall cease and terminate with respect to the Hypothecated Property;

- 7.4.7 the Attorney shall not be obliged to render an account with respect to its actions in the exercise of its hypothecary rights, except as stipulated by law. Should the Attorney see fit to render an account, it may do so in summary fashion;
- 7.4.8 for the purpose of exercising any of its rights, the Attorney may make use of any premises on which the Hypothecated Property is located, the whole at the Grantor's expense;
- 7.4.9 the Attorney may, at its discretion, decide to sell and dispose of the Hypothecated Property as a whole or in separate parcels, by tender, public auction or private contract, on such date and on such terms and conditions as the Attorney may stipulate, after giving such prior notices as are required by Articles 2784 and following of the Civil Code, and the Attorney may make such sale for cash or credit upon such reasonable conditions as to upset or reserve bid or price and as to terms of payment as it may deem proper, and may rescind or vary any contract of sale that may have been entered into and resell such property under any of the powers conferred by this Deed, adjourn any such sale from time to time and execute and deliver to the purchaser or purchasers of the said property or any part thereof good and sufficient deed or deeds for the same, the Grantor hereby giving the Attorney an irrevocable power of attorney for the purpose of making such sale and executing such deeds, and any such sale made as aforesaid shall be a perpetual bar in law and in equity against the Grantor and its assigns and against any other Persons who may claim the said property or any part thereof from the Grantor or its assigns;
- 7.4.10 for the purposes of enabling the Attorney to exercise rights and remedies under Section 7 hereof (including, without limiting the terms of Section 7.4 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Hypothecated Property) at such time as the Attorney shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Attorney an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any intellectual property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including such license access to all media in which any of the licensed items may be recorded or stored and to all computer

software and programs used for the compilation or printout thereof;

7.4.11 the Attorney, or its agents or representatives, may become purchasers at any sale of the Hypothecated Property, whether made under the power of sale herein contained or pursuant to foreclosure or other legal proceedings; and

7.4.12 the Attorney may, in addition to any other rights it may have, appoint by instrument in writing a receiver or receiver and manager (both of which are herein called a Receiver) of all or any part of the Hypothecated Property or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Attorney has under this Deed or at law. In exercising any such powers, any such Receiver shall, to the extent permitted by law, act as and for all purposes shall be deemed to be the agent of the Grantor and the Attorney shall not be responsible for any act or default of any such Receiver. The Attorney may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Attorney. A court need not appoint, ratify the appointment by the Attorney of or otherwise supervise in any manner the actions of any Receiver. Upon the Grantor receiving notice from the Attorney of the taking of possession of its Hypothecated Property or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of the Grantor with respect to its Hypothecated Property shall cease, unless specifically continued by the written consent of the Attorney.

7.5 Taking in Payment

If the Attorney elects to exercise its right to take in payment the Hypothecated Property of the Grantor and the Grantor requires that the Attorney instead sell, by itself or under judicial authority, its Hypothecated Property on which such right is exercised, the Grantor hereby acknowledges that the Attorney shall not be bound to abandon its recourse of taking in payment unless, prior to the expiry of the time period allocated for surrender, the Attorney (i) has been granted a security satisfactory to it, to ensure that the proceeds of the sale of the Hypothecated Property will be sufficient to pay the Secured Obligations in full, (ii) has been reimbursed for all reasonable costs and expenses incurred in connection with this Deed and (iii) has been advanced the necessary sums for the sale of said Hypothecated Property; the Grantor further acknowledges that the Attorney alone is entitled to select the type of sale it may wish to conduct or have conducted.

8. THE ATTORNEY

8.1 Hypothecary Representative

The Grantor hereby irrevocably appoints CIBC and CIBC hereby irrevocably accepts and agrees to act as the hypothecary representative for all present and future Secured Parties as contemplated in Article 2692 of the Civil Code, in order to receive and hold the Hypothec created hereby and hereafter created or constituted, as continuing security for the payment of the Secured Obligations. Any person who becomes a Secured Party shall benefit from the provisions hereof and the appointment of the Attorney as the hypothecary representative for all present and future Secured Parties and, upon becoming a Secured Party, irrevocably authorizes the Attorney to perform such function. The Attorney may perform any act necessary to the fulfillment of its duties.

8.2 Habendum

The Attorney, as hypothecary representative for all present and future Secured Parties, shall have and hold the Hypothec constituted by this Deed and all rights hereby conferred unto it for the equal benefit and security of all the Secured Parties without any preference or priority of any of the aforesaid over any others, the whole as provided hereunder.

8.3 Liability of Attorney

The Attorney shall not be liable for material injuries resulting from its fault, unless such fault is gross or intentional. The Attorney shall not be responsible for any loss occasioned by its taking possession of the Hypothecated Property or enforcing the terms of this Deed, nor for any neglect, failure or delay in exercising or enforcing any of its rights and recourses, nor for any act, default or misconduct of any agent, broker, officer, employee or other party acting for or on behalf of the Attorney unless same results from it or its gross or intentional fault or that of its agent, broker, officer, employee or other party acting on its behalf. The Attorney shall be accountable only for such monies as it shall actually receive.

8.4 Protection of Persons Dealing with the Attorney

No Person dealing with the Attorney or its representatives shall be concerned to inquire whether the security created under this Deed has become enforceable, or whether the powers which the Attorney is purporting to exercise have become exercisable, or whether any money remains due upon the security of this Deed, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the property or regularity of any sale or of any other dealing by the Attorney with the Hypothecated Property pursuant to the terms of any applicable law or this Deed or to see to the application of any money paid to the Attorney and, in the absence of fraud on the part of such Person, such dealings shall be deemed, so far as regards the safety and protection of such Persons, to be within the powers conferred under this Deed and to be valid and effectual accordingly.

8.5 Delegation by Attorney

The Attorney may delegate the exercise of its rights or the performance of its obligations hereunder, to another Person, including a Secured Party, in accordance with the Credit Agreement. In that event, after obtaining such

written assurances regarding the confidentiality thereof as the Attorney considers reasonably satisfactory, the Attorney may furnish that Person with any information it may have concerning the Grantor or its Hypothecated Property. The Attorney shall not be responsible for damages resulting from such delegation from any fault committed by such delegate, unless same results from an intentional or gross fault. The Attorney shall be entitled to take legal or other advice and employ such assistance as may be necessary to the proper discharge of its duties, and to pay proper and reasonable compensation to such agents and attorneys for all such legal and other advice or assistance as aforesaid.

8.6 Resignation or Replacement of Attorney

The Attorney may at any time resign from office upon thirty (30) days prior notice in writing given to the Grantor and to the Secured Party or upon such shorter delay as may be accepted by the Secured Parties. The Secured Parties may, subject to the terms of the Credit Agreement, then or at any time thereafter appoint a new hypothecary representative confirming such appointment in writing to the Grantor, which the Grantor hereby undertakes to accept, in the place of the hypothecary representative so resigning; no resignation shall come into effect before a new hypothecary representative has been appointed and has accepted its appointment.

The Secured Parties may at any time replace the Attorney in accordance with the Credit Agreement, which replacement the Grantor hereby undertake to accept.

The new hypothecary representative, without further act (other than the filing of a notice of replacement in the applicable register in accordance with Article 2692 of the Civil Code for the purposes of exercising the rights relating to the hypothec created hereunder), shall then be vested and have all rights, powers and authorities granted to the Attorney hereunder and be subject in all respects to the terms, conditions and provisions hereof to the same extent as if originally acting as hypothecary representative hereunder.

8.7 Attorney to Exercise Reasonable Diligence

The Attorney shall only be accountable for reasonable diligence in the exercise of its functions under this Deed and shall only be liable for its own intentional or gross fault and that of its agents, brokers, officers, employees and other persons acting on its behalf.

8.8 Absolute Discretion of Attorney

The Attorney, except as otherwise provided in this Deed, shall, as regards all the powers, authorities and discretions vested in it, have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode and time for the exercise thereof, and in the absence of gross or intentional fault, it shall be in no way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.

8.9 No Liability for Title Defects

The Attorney shall not be liable for or by reason of any failure or defect of title to or any priority, prior claim, hypothec, or other charge upon the

Hypothecated Property, or for or by reason of the statements of facts or recitals contained in this Deed, or be required to verify the same; but all such statements and recitals are and shall be deemed to have been made by the Grantor only, and it shall not be the duty of the Attorney, and nothing contained in this Deed shall in any way impose any obligation upon the Attorney to insure or keep insured, against loss or damage by fire or otherwise, the Hypothecated Property or any part thereof or to keep itself informed or advised as to the payment by the Grantor of any taxes or assessments or premiums of insurance or other payments which the Grantor should make.

8.10 Investment of Hypothecated Property

The Attorney shall be free to invest any monies or instruments received or held by it pursuant hereto or to deposit same in a non-interest bearing account without having to comply with any provisions of the Civil Code concerning the investment of the property of others to the extent permitted under the Credit Agreement.

8.11 Extensions

The Attorney may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Grantor, with other parties and with the Hypothecated Property transferred hereby as the Attorney may see fit without prejudice to the liability of the Grantor or to the Attorney's rights pursuant to this Deed.

8.12 Recourse Cumulative

The rights and recourses of the Attorney pursuant to this Deed are cumulative and do not exclude any other rights and recourses which the Attorney might have. No omission or delay on the part of the Attorney in the exercise of any right shall have the effect of operating as waiver of such right. The partial or sole exercise of a right or power will not prevent the Attorney from exercising thereafter any other right or power.

8.13 Liability of Secured Parties

No Secured Party shall be liable to third parties for acts performed by the Attorney (or any other person appointed by the Attorney to perform all or any of its rights, powers, trusts or duties hereunder) during the exercise of its rights, powers and the performance of its duties under this Deed or for injury caused to such parties by the fault of the Attorney (or any such Person), or for contracts entered into in favour of such parties, during such performance and the Attorney (or any such Person) alone shall be so liable subject to any rights or recourses which the Attorney (or any such Person) may have hereunder or under law against the Grantor or any other Person (other than a Secured Party) in connection with any such liability.

8.14 Bankruptcy of the Attorney

The bankruptcy of the Attorney shall not terminate its rights, powers, trusts and duties hereunder provided that such rights, powers, trusts and duties are assumed by a successor Attorney appointed in accordance with the provisions hereof.

8.15 Benefit of Deed

The rights hereby conferred upon the Attorney shall benefit all of its successors, including any entity resulting from the merger of the Attorney with any other Person or Persons, and any entity that succeeds the Attorney as Attorney.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Representations and Warranties

In addition to and not in substitution for any representation and warranty contained in this Deed, the Grantor does hereby represent and warrant to and in favour of the Attorney that each representation and warranty made in the Credit Agreement, inasmuch as applicable to the Grantor, is hereby reiterated and restated by the Grantor and each such representation and warranty is hereby incorporated by reference, *mutatis mutandis*, and is hereby confirmed as true and correct as of the date hereof.

9.2 Covenants and Agreements

In addition to and not in substitution for any covenant, agreement, undertaking and condition contained in this Deed, the Grantor does hereby covenant and agree with the Attorney, that it shall comply with, and ensure the compliance of, all covenants, agreements, undertakings and conditions given under the Credit Agreement, inasmuch as applicable to the Grantor, and each such covenant, agreement, undertaking and condition is hereby incorporated by reference, *mutatis mutandis*.

9.3 Survival

All representations, warranties, covenants, agreements, undertakings and conditions made in the Loan Documents to which it is a party, which are material, shall be considered to have been relied on by the Attorney and shall survive the execution and delivery of this Deed of Hypothec or any investigation made at any time by or on behalf of the Attorney and any disposition or payment of the Secured Obligations until the Termination Date.

10. MISCELLANEOUS PROVISIONS

10.1 Nullity of a Provision

In the event that any provision of this Deed is declared null and void or is deemed not to have been written, the other provisions of this Deed shall be severable from such provision and shall continue to have full force and effect.

10.2 Application of Payments

Upon the exercise by the Attorney of any rights and remedies provided hereunder, any and all proceeds received from such exercise shall be applied and distributed as provided in the Credit Agreement.

Should any of the Hypothecated Property or its proceeds be in a currency different from that of the Secured Obligations, the Attorney is hereby authorized to convert the amount or the claim in question into the currency

of the Secured Obligations in accordance with the terms of the Credit Agreement.

10.3 Rights Cumulative and Exercise of Remedies

The rights hereby created are in addition to and not in substitution for any other right or security held by the Attorney or the Secured Parties. The exercise by the Attorney of any of its rights and remedies shall not prevent it or the Secured Parties from exercising any other right or remedy conferred upon them by this Deed or any other security or by law.

The Attorney may exercise the rights conferred upon it by this Deed on any part of the Hypothecated Property, without being obliged to do so on the entire Hypothecated Property and without prejudice to its rights and remedies with respect to the remaining Hypothecated Property, and it shall not be in any way obliged to exercise its rights and remedies against any other Person liable for the Secured Obligations or to realize any other security securing the Secured Obligations.

10.4 Notices

Except as otherwise provided herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made to the party to whom such notice, request, demand or other communication is required or permitted to be given or made under this Deed, when delivered to such party in accordance with the provisions of the Credit Agreement.

10.5 Notice of Default

The mere expiry of the time limit for performing any of the Secured Obligations shall serve to put the Grantor in default, without any notice or demand being required for that purpose except as required by applicable law.

10.6 Waivers

The Grantor may not claim that an act or omission by the Attorney constitutes or implies a waiver of its right to invoke a default by the Grantor or to assert a right arising out of such default, unless the Attorney has expressly so stated after the occurrence of the default.

10.7 Further Assurances

The Grantor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, conveyances, instruments, transfers, assignments, security agreements and assurances as the Attorney may reasonably require in order to give effect to the provisions and purposes of this Deed including, without limitation, in respect of the Attorney's enforcement of the security and its realization on the Hypothecated Property, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming and/or perfecting the security interest of the Attorney in the Hypothecated Property pursuant to this Deed. Effective upon the occurrence and during the continuance of an Event of Default, the Grantor hereby constitutes and appoints any officer of the Attorney at its above address, or any Receiver appointed by the court or the Attorney as

provided herein, the true and lawful attorney of the Grantor irrevocably with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things with the right to use the name of the Grantor whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Deed. Without limiting the generality of the foregoing, so long as the Attorney shall be entitled hereunder to make collections in respect of the Hypothecated Property, the Attorney shall have the right and power to receive, endorse and collect all cheques payable to the order of the Grantor representing any dividend, payment or other distribution in respect of its Hypothecated Property or any part thereof and to give full discharge for the same. The Grantor hereby authorizes the Attorney to file such proofs of claim and other documents as may be necessary or advisable in order to prove its claim in any bankruptcy, proposed winding-up or other proceeding relating to the Grantor.

10.8 Indemnification

The Grantor hereby agrees and undertakes to indemnify the Attorney and save and hold it harmless from and against any and all losses, expenses, costs and liabilities (including legal fees and disbursements) that the Attorney or any of its mandataries or Persons holding its power of attorney may sustain or incur in the exercise of the powers and rights conferred upon the Attorney hereunder, except losses, expenses, costs and liabilities resulting from the Attorney's, or its agent, broker, officer, employee or other Person acting on its behalf, gross or intentional fault.

10.9 Election of Domicile

Any service, notice or demand shall be given or made upon the Grantor in accordance with the terms of the Credit Agreement.

10.10 Power of Attorney

The Grantor hereby grants to the Attorney an irrevocable power of attorney, effective upon the occurrence of an Event of Default that is continuing, with full powers of substitution and revocation, to do, make and execute, for the Grantor and in its name, all such deeds, documents, transfers, assignments, hypothecs, assurances, consents and things as the Attorney may deem necessary or appropriate to be done, made or executed by the Grantor to protect the Attorney's rights hereunder and/or preserve the Hypothecated Property and to give effect to all the provisions of this Deed and the documents and other acts, matters and things that the Grantor has agreed to do, make and execute or that may be required in the exercise of the powers conferred upon the Attorney by the Loan Documents, and in particular, without limiting the generality of the foregoing, in order that a valid and enforceable Hypothec be created and maintained on any property forming part of the Hypothecated Property as of the execution of this Deed or at any time in the future, to endorse or transfer all or any part of the securities, if any, included in the Hypothecated Property over to the Attorney or its agents, correspondents or mandataries, including any depository, so that the Attorney or its agents, correspondents or mandataries may be registered as sole owner of such securities, and to obtain from any taxation authority at any time, if deemed useful, any information necessary to allow the Attorney to determine the amount of the Grantor's indebtedness to such taxation authorities. The Grantor also grants effective upon the occurrence of an Event of Default that is

continuing to each of such Persons holding its power of attorney the right to use its name whenever they may deem it necessary or appropriate to do so for the purposes hereof and the Grantor further ratifies and confirms, and undertakes to ratify and confirm, all acts and actions done or taken by each of such Persons in connection herewith.

10.11 Interpretation

References herein to gender shall include all genders and the singular shall include the plural and vice versa, as required by the context.

10.12 Divisions and Titles

The division of this Deed into Sections, paragraphs and subparagraphs and the insertion of titles are for ease of reference only and shall not influence its meaning or construction.

10.13 Paramountcy

Except as limited below, in the event that any provisions of this Deed contradict, are inconsistent with or are otherwise incapable of being construed in harmony with the provisions (including any rights, remedies and covenants therein) of the Credit Agreement, the provisions of the Credit Agreement shall take precedence over those contained in this Deed. Notwithstanding the foregoing, in the event that provisions related to or affecting the creation, validity or enforcement of the security created under this Deed are contained in the Credit Agreement, if any, contradict or are otherwise incapable of being construed in harmony with the provisions of this Deed, such provisions of this Deed shall take precedence over those contained in the Credit Agreement.

10.14 Applicable Law

This Deed shall be governed and construed in accordance with the laws in force in the Province of Quebec.

10.15 Explanation of Contract

The Grantor confirms that it has had an opportunity to consult a lawyer, notary or other adviser in connection therewith.

10.16 Language

The parties hereto confirm that it is their wish that this Deed and all documents relating thereto, including notices, be drawn up in the English language. *Les parties aux présentes confirment leur volonté que cet acte de même que tous documents, y compris tous avis, s'y rapportant soient rédigés en langue anglaise.*

SCHEDULE A

**DESCRIPTION OF CERTAIN SPECIFIC PROPERTY INCLUDED IN THE
HYPOTHECATED PROPERTY (AS OF THE EXECUTION OF THIS DEED)**

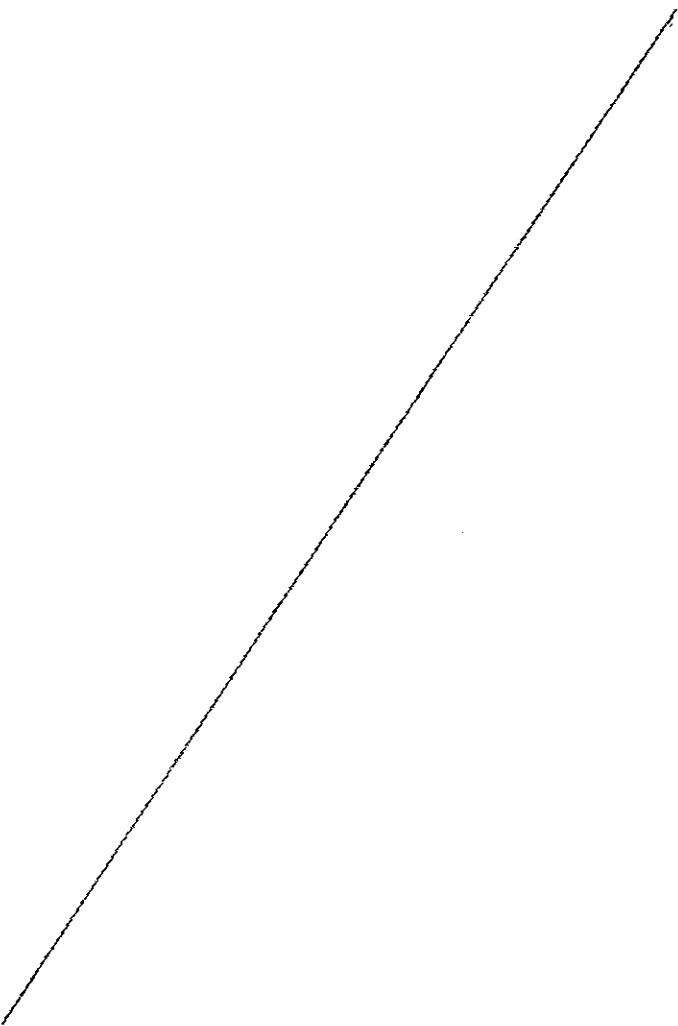
Securities

None.

Intellectual Property Rights

None.

[signature page follows]



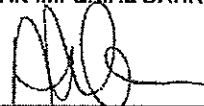
WHEREOF ACTE

DONE AND PASSED at Montréal, Province of Québec, on the day, month and year first mentioned above and entered in the minutes of the undersigned Notary under number TWO HUNDRED AND TWENTY-FOUR (224).

AND AFTER the parties had declared that they had taken cognizance of these presents and had exempted the said Notary from reading them or causing them to be read, the parties hereto have signed with and in the presence of the Notary.

CANADIAN IMPERIAL BANK OF COMMERCE

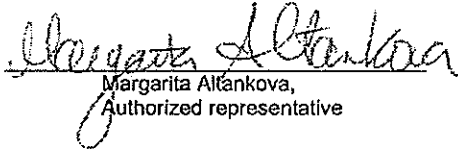
Per:



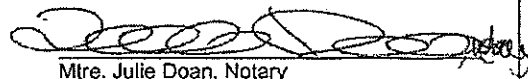
Arnold Cohen,
Authorized representative

2473304 ONTARIO INC.

Per:



Margarita Altankova,
Authorized representative



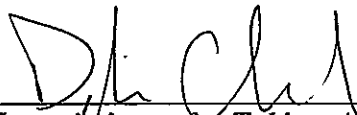
Mre. Julie Doan, Notary



Tab C

THIS IS EXHIBIT "C"

***referred to in the Affidavit of
Mark Sun sworn before me this
6th day of June 2016***

A handwritten signature in black ink, appearing to read "Dylan Chochla", written over a horizontal line.

A Commissioner for Taking Affidavits

Dylan Chochla



Canadian Imperial Bank of Commerce
Commerce Court West
199 Bay Street, 4th Floor
Toronto ON M5L 1A2

April 21, 2015

BY REGISTERED MAIL AND E-MAIL

GRAFTON-FRASER INC.
44 Apex Road
Toronto, ON
M6A 2V2

Attention: Mark Sun

Dear Sir:

Re: Grafton-Fraser Inc. and 2473304 Ontario Inc., as Borrowers (the **Borrowers**) and Canadian Imperial Bank of Commerce, as agent (the **Agent**)

Reference is made to the credit agreement dated as of February 12, 2016 among the Borrowers, the lenders from time to time party thereto, as lenders (the **Lenders**) and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the **Credit Agreement**). Capitalized terms used in this letter and not otherwise defined herein shall have the meaning specified in the Credit Agreement.

Please be advised that certain Defaults and Events of Default have occurred and continue to exist under Section 7.1 (including Sections 7.1(c) and 7.1(h)(v)) of the Credit Agreement (collectively, the **Existing Defaults**). In accordance with the Agent's rights afforded to it under the Credit Agreement and the Loan Documents upon the occurrence and during the continuance of a Default or an Event of Default or otherwise, the Agent hereby notifies the Borrowers that:

- 1 As a result of a Weekly Reporting Trigger Period being in effect, the Borrowers shall provide to the Agent, on a weekly basis (on the third Business Day of each week for the prior week), the reporting, information and deliverables required pursuant to Section 5.1(f) of the Credit Agreement (which includes, *inter alia*, Borrowing Base Reports);
- 2 As a result of a Block Event having occurred, in accordance with Section 2.17(c) of the Credit Agreement the Borrowers shall direct all of their account debtors to deposit any and all proceeds of Collateral into the Blocked Accounts;
- 3 Physical verifications of inventory, appraisals of inventory and or collateral field examinations, at the discretion of the Agent, shall be conducted at times and dates requested by the Agent (with 24 hours prior notice) and by examiners and appraisers acceptable to the Agent; and
- 4 pursuant to Section 5.22(d) of the Credit Agreement the Borrowers are prohibited from providing any discount, credit or allowance to any Account debtor without the Agent's prior written consent.

In accordance with the provisions of the Credit Agreement (including Section 6.8 thereof), no Credit Party shall take any action or make any payments that are prohibited from being taken or made while a Default or Event of Default exists, including, without limitation, payment on account of any Indebtedness for borrowed money except for payment on account of Indebtedness owing to the Agent or the Lenders

under the Credit Agreement. Any such actions taken or made in contravention of the Credit Agreement shall constitute an Event of Default under the Credit Agreement (specifically, *inter alia*, pursuant to Section 7.1(d) thereof).

Notwithstanding anything to the contrary in this letter, the Agent and Lenders expressly reserve all of their rights and remedies granted under the Credit Agreement, the other Loan Documents and Applicable Law in respect of the Existing Defaults (including, without limitation, (i) the right to collect default interest pursuant to Section 2.5(b) of the Credit Agreement, and (ii) the right to take such steps and do such things, at any time, as they may consider necessary to protect or preserve their position, all without further notice to the Borrowers or any other Credit Party or Person).

This letter is written under reserve of, and without prejudice to, all of the rights, remedies and recourses of the Lender under the Loan Documents and nothing herein can or shall be construed to be interpreted as (a) a waiver of the Existing Defaults or any other Default or Event of Default which may have occurred or is continuing as of the date of this letter or which may occur after the date of this letter; and (b) as an agreement on the Agent's or Lenders' part to waive or forbear any of its or their rights or remedies under the Credit Agreement concerning the Existing Defaults or concerning any other Default or Event of Default which may have occurred or is continuing as of the date hereof or which may occur after the date hereof.

This letter may be executed in one or more counterparts, including by way of facsimile or other electronic means, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(signature pages follow on the next page)

Yours very truly,

**CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent**

Per: _____

Name:

Title:

Italo Fortino

Authorized Signatory

Per: _____

Name:

Title:

Kyle Lane

Authorized Signatory

ACCEPTED AND AGREED:

GRAFTON-FRASER INC.

Per: _____

Name:

Title:

2473304 ONTARIO INC.

Per: _____

Name:

Title:

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2473304 ONTARIO INC.**

(the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**APPLICATION RECORD
Volume 1 of 3**

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