

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**SALUS CAPITAL PARTNERS, LLC**

Applicant

and

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ  
CORP., 2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY  
COLLECTION INCORPORATED AND P.M.R. INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**APPLICATION RECORD  
(VOLUME II OF II)**

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**TO: ATTACHED SERVICE LIST**





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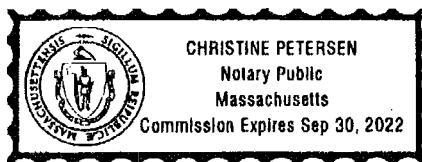
**TAB O**



Attached is Exhibit "O" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





DATED: , 2016

**DEBENTURE**

between

**J.S.N. JEWELLERY UK LIMITED**

and

**SALUS CAPITAL PARTNERS, LLC**

THIS DEED is dated [                      ] 2016

## **PARTIES**

- (1) **J.S.N. JEWELLERY UK LIMITED** incorporated and registered in England and Wales, company number 03557501, with its registered office is at 19 -20 Bourne Court, Southend Road, Woodford Green, Essex, IG8 8HD, United Kingdom as guarantor and indemnifier ("Guarantor").
- (2) **SALUS CAPITAL PARTNERS, LLC** incorporated and registered in the State of Delaware, United States of America, with its registered office at 197, First Avenue, Suite 250, Needham Heights, Boston, MA, 02494-2816, United States of America as administrative agent and collateral agent (in such capacities, the "Agent") for its own benefit and for the benefit of the Lenders (as defined in the Credit Agreement referred to below).

## **BACKGROUND**

- (A) Reference is made to that certain super priority DIP credit agreement dated as of \_\_\_\_\_, 2016 (as amended, modified, supplemented or restated hereafter, the "Credit Agreement"), by and between, among others, (i) **BEN MOSS JEWELLERS WESTERN CANADA LTD.**, a company existing under the laws of the province of Manitoba, Canada (the "Borrower"), (ii) the persons named therein as guarantors, including the Guarantor, (iii) the Lenders party thereto from time to time; and (iv) the Agent.
- (B) The Lenders have agreed to make Loans to the Borrower pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement.
- (C) As a subsidiary of the Borrower, the Guarantor acknowledges that it will receive direct and indirect corporate benefits from the availability of the credit facility provided for in the Credit Agreement and from the making of the Loans by the Lenders.
- (D) The obligations of the Lenders to make Loans are each subject to, among other things, a condition precedent that the Guarantor execute and deliver this Debenture to secure the obligations and liabilities of the Borrower under the Credit Agreement and the Loan Documents.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. Capitalised terms used and not defined in this Deed shall have the meanings assigned to such terms in the Credit Agreement.

1.2. The following definitions apply in this Deed.

"Administrator" an administrator appointed to manage the affairs, business and property of the Guarantor pursuant to clause 13.9.

"Book Debts" all present and future book and other debts, and monetary claims due or owing to the Guarantor, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Guarantor in relation to any of them.

"Delegate" any person appointed by the Agent or any Receiver pursuant to clause 18 and any person appointed as attorney of the Agent, Receiver or Delegate.

"Designated Account" the following client accounts in the name of the Guarantor with National Westminster Bank plc at its branch office at 63 Piccadilly, London, W1A 2PP, sort code 50-41-01, as may be renumbered or redesignated from time to time and all rights of the Guarantor in relation to such accounts (i) GBP current account # 46010882, (ii) GBP sweep deposit account # 46010939 and (iii) USD account # 140/01/48052868 and any other account of the Guarantor nominated by the Agent as a designated account for the purposes of this deed.

"Environment" the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

"Environmental Law" all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

"Equipment" all present and future equipment, plant, machinery, tools, vehicles, furniture, fittings, installations and apparatus and tither tangible moveable property for the time being owned by the Guarantor, including any part of it and all spare parts, replacements, modifications and additions.

"Financial Collateral" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Financial Collateral Regulations" the Financial Collateral Arrangements (No 2) Regulations 2003 (81200313226).

"Insurance Policy" each contract and policy of insurance effected or maintained by the Guarantor from time to time in respect of its assets or business (including, without limitation, any insurances relating to the Properties or the Equipment).

"Intellectual Property" the Guarantor's present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights.

"Investments" all present and future certificated stocks, shares, loan capital, securities, bonds and investments (whether or not marketable) for the time being owned (at law or in equity) by the Guarantor, including any:

- 1.2.1. dividend, interest or other distribution paid or payable in relation to any of the Investments; and
- 1.2.2. right, money, shares or property accruing, offered or issued at any time in relation to any of the Investments by way of redemption, substitution, exchange, conversion, bonus, preference or otherwise, under option rights or otherwise.

"LPA 1925" Law of Property Act 1925.

"Properties" all freehold and leasehold properties (whether registered or unregistered) and all common-hold properties, now or in the future (and from time to time) owned by the Guarantor, or in which the Guarantor holds an interest and "Property" means any of them.

"Receiver" a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Agent under clause 16.

"Relevant Agreement" each agreement specified in Schedule 2.

"Secured Assets" all the assets, property and undertaking for the time being subject to the Security Interests created by, or pursuant to, this Deed.

"Secured Liabilities" all present and future monies, obligations and liabilities owed by the Guarantor, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Credit Agreement, (including, without limitation, those arising under clause 25.3.2) this Deed or any other Loan Document, together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities.

"Security Financial Collateral Arrangement" shall have the meaning given to that expression in the Financial Collateral Regulations.

"Security Interest" any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.



"Security Period" the period starting on the date of this Deed and ending on the date on which the Agent is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

1.3. Interpretation

In this deed:

- 1.3.1. reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.3.2. unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.3.3. unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- 1.3.4. a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed, unless the context otherwise requires;
- 1.3.5. a reference to "continuing" in relation to an Event of Default means an Event of Default which has not been remedied or waived;
- 1.3.6. a reference to "this deed" or "this Debenture" (or any provision of it) or any other document shall be construed as a reference to this Deed, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;
- 1.3.7. a reference to a "person" shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, or any state or any agency of any person;
- 1.3.8. a reference to an "amendment" includes a novation, re-enactment, supplement or variation (and "amended" shall be construed accordingly);
- 1.3.9. a reference to "assets" includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.3.10. a reference to an "authorisation" includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.3.11. a reference to a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body,

agency, department or regulatory, self-regulatory or other authority or organisation;

1.3.12. a reference to "determines" or "determined" means, unless the contrary is indicated, a determination made at the discretion of the person making it;

1.3.13. a reference to the "Guarantor" or the "Agent" or any "Lender" or any "Credit Party" or any "Loan Party" shall include its successors, permitted transferees and permitted assigns; and

1.3.14. clause and schedule headings shall not affect the interpretation of this Deed.

1.4. Clawback

If the Agent considers that an amount paid by the Guarantor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Guarantor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.5. Nature of security over real property

A reference in this Deed to a charge or mortgage of or over any Property includes:

1.5.1. all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;

1.5.2. the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;

1.5.3. The benefit of any covenants for title given, or entered into, by any predecessor in title of the Guarantor in respect of that Property, and any monies paid or payable in respect of those covenants; and

1.5.4. all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

1.6. Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Credit Agreement and of the other Loan Documents are incorporated into this Deed.

1.7. Third party rights

The Lenders shall have the right to enforce and enjoy the benefit of any term of this Debenture under the Contracts (Rights of Third Parties) Act 1999, but no other third party has the right under such Act, to enforce, or to enjoy the benefit of, any term of this Debenture.

1.8. Perpetuity period

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

1.9. Schedules

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

2. COVENANT TO PAY

The Guarantor covenants to the Agent, for its own benefit and for the benefit of the Lenders on demand, to pay to the Agent and to discharge the Secured Liabilities when they become due.

3. GRANT OF SECURITY

3.1. Legal mortgage

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee charges to the Agent, for its own benefit and for the benefit of the Lenders by way of legal mortgage, any property specified in Schedule t.

3.2. Fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee charges to the Agent, for its own benefit and for the benefit of the Lenders by way of fixed charge:

- 3.2.1. all Properties acquired by the Guarantor in the future;
- 3.2.2. all present and future interests of the Guarantor not effectively mortgaged or charged under the preceding provisions of this clause 3 in, or over, freehold or leasehold property;
- 3.2.3. all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to each Property;
- 3.2.4. all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Guarantor's business or the use of any Secured Asset, and all rights in connection with them;
- 3.2.5. all its present and future goodwill;

- 3.2.6. all its uncalled capital;
- 3.2.7. all the Equipment;
- 3.2.8. all the Intellectual property;
- 3.2.9. all the Book Debts;
- 3.2.10. all the Investments; and
- 3.2.11. all monies from time to time standing to the credit of its accounts with any bank, financial institution or other person (including each Designated Account).

3.3. Assignment

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee assigns to the Agent, for its own benefit and for the benefit of the Lenders, absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities:

- 3.3.1. all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premium in connection with each Insurance Policy; and
- 3.3.2. the benefit of each Relevant Agreement and the benefit of any guarantee or security for the performance of an Relevant Agreement.

3.4. Floating charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Guarantor with full title guarantee charges to the Agent, for its own benefit and for the benefit of the Lenders, by way of first floating charge, all the undertaking, property, assets and rights of the Guarantor at any time not effectively mortgaged, charged or assigned pursuant to clause 3.1 to clause 3.3 inclusive.

3.5. Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by clause 3.4.

3.6. Automatic crystallisation of floating charge The floating charge created by clause 3.4 shall automatically and immediately (without notice) be converted into a fixed charge over the assets subject to that floating charge if.

3.6.1. the Guarantor:

- (a) creates, or attempts to create, without the prior written consent of the Agent, a Security Interest or a trust in favour of

another person over all or any part of the Secured Assets (except as expressly permitted by the terms of this Deed or the Facility Agreement); or

- (b) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- 3.6.2. any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Secured Assets; or
- 3.6.3. a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Guarantor.

3.7. Crystallisation of floating charge by notice

The Agent may, in its sole discretion, at any time and by written notice to the Guarantor, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Agent in that notice.

3.8. Assets acquired after any floating charge has crystallised

Any asset acquired by the Guarantor after any crystallisation of the floating charge created under this Deed that, but for that crystallisation, would be subject to a floating charge under this Deed, shall (unless the Agent confirms otherwise to the Guarantor in writing) be charged to the Agent, for its own benefit and for the benefit of the Lenders by way of first fixed charge.

4. LIABILITY OF THE GUARANTOR

4.1. Liability not discharged

The Guarantor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 4.1.1. any security, guarantee, indemnity, remedy or other right held by, or available to, the Lenders that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 4.1.2. the Lenders renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 4.1.3. any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Guarantor.

4.2. Immediate recourse

The Guarantor waives any right it may have to require the Agent to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Guarantor.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1. Representations and warranties**

The Guarantor makes the representations and warranties set out in this clause 5 to the Agent, for its own benefit and for the benefit of the Lenders.

**5.2. Ownership of Secured Assets**

The Guarantor is the legal and beneficial owner of the Secured Assets.

**5.3. No Security Interests**

The Secured Assets are free from any Security Interest other than the Security Interests created by this Deed.

**5.4. No adverse claims**

The Guarantor has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

**5.5. No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

**5.6. No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

**5.7. No interference in enjoyment**

No facility necessary for the enjoyment and use of the Secured Assets is subject to terms entitling any person to terminate or curtail its use.

**5.8. No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

**5.9. Avoidance of security**

No Security Interest expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Guarantor or otherwise.

5.10. No prohibitions or breaches

There is no prohibition on assignment in any Insurance Policy or Relevant Agreement and the entry into this Deed by the Guarantor does not, and will not, constitute a breach of any Insurance Policy, Relevant Agreement or any other agreement or instrument binding on the Guarantor or its assets.

5.11. Environmental compliance

The Guarantor has, at all times, complied in all material respects with all applicable Environmental Law.

5.12. Enforceable security

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Guarantor, and is and will continue to be effective security overall and every part of the Secured Assets in accordance with its terms.

5.13. Times for making representations and warranties

The representations and warranties set out in clause 5.2 to clause 5.12 are made by the Guarantor on the date of this Deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

6. GENERAL COVENANTS

6.1 Negative pledge and disposal restrictions

The Guarantor shall not at any time, except with the prior written consent of the Agent:

6.1.1. create, purport to create or permit to subsist any Security Interest on, or in relation to, any Secured Asset other than any Security Interest created by this Deed;

6.1.2. sell, assign, transfer, part with possession of (including by withdrawal or transfer of any monies standing to the credit of any Designated Account), or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are only subject to an uncrystallised floating charge); or

6.1.3. create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2. Preservation of Secured Assets

The Guarantor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by

the Agent; for its own benefit or for the benefit of the Lenders, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed.

6.3. Compliance with laws and regulations

6.3.1. The Guarantor shall not without the Agent 's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.

6.3.2. The Guarantor shall:

- (a) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
- (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
- (c) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

6.4. Enforcement of rights

The Guarantor shall use its best endeavours to:

6.4.1. procure the prompt observance and performance of the covenants and other obligations imposed on the Guarantor's counterparties (including each counterparty in respect of a Relevant Agreement and each insurer in respect of an Insurance Policy); and

6.4.2. enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Agent may require from time to time.

6.5. Notice of misrepresentation and breaches

The Guarantor shall, promptly on becoming aware of any of the same, give the Agent notice in writing of:

6.5.1. any representation or warranty set out in this Deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and

6.5.2. any breach of any covenant set out in this Deed.

6.6. Title documents



The Guarantor shall, as so required by the Agent, deposit with the Agent and the Agent shall, for the duration of this Deed be entitled to hold:

- 6.6.1. all deeds and documents of title relating to the Secured Assets that are in the possession or control of the Guarantor (and if these are not within the possession or control of the Guarantor, the Guarantor undertakes to obtain possession of all these deeds and documents of title);
- 6.6.2. all Insurance Policies and any other insurance policies relating to any of the Secured Assets that the Guarantor is entitled to possess;
- 6.6.3. all deeds and documents of title (if any) relating to the Book Debts as the Agent may specify from time to time; and
- 6.6.4. Copies of all the Relevant Agreements, certified to be true copies by either a director of the Guarantor or by the Guarantor's solicitors.

6.7. Insurance

- 6.7.1. The Guarantor shall insure and keep insured (or where, in the case of any leasehold property, insurance is the responsibility of the landlord under the terms of the lease, either procure that the landlord insures and keeps insured or, if and to the extent that the landlord does not do so, itself insure and keep insured) the Secured Assets against:
  - (a) loss or damage by fire or terrorist acts;
  - (b) Other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Guarantor; and
  - (c) any other risk, perils and contingencies as the Agent may reasonably require.

Any such insurance must be with an insurance company or underwriters, and on such terms, as are reasonably acceptable to the Agent, and must be for not less than the replacement value of the Secured Assets.

- 6.7.2. The Guarantor shall, if requested by the Agent, produce to the Agent the policy, certificate or cover note relating to the insurance required by clause 6.7.1 (or where, in the case of any leasehold property, that insurance is effected by the landlord, such evidence of insurance as the Guarantor is entitled to obtain from the landlord under the terms of the relevant lease).
- 6.7.3. The Guarantor shall, if requested by the Agent, procure that a note of the Agent's interest is endorsed upon each insurance policy maintained by it or any person on its behalf in accordance with clause

6.7.1 and that the terms of each insurance policy require the insurer not to invalidate the policy as against the Agent by reason of the act or default of any other joint or named insured and not to cancel it without giving at least 30 days' prior written notice to the Agent.

6.8. Insurance premiums

The Guarantor shall:

6.8.1. promptly pay all premiums in respect of each insurance policy maintained by it in accordance with clause 6.7.1 and do all other things necessary to keep that policy in full force and effect; and

6.8.2. (if the Agent so requires) produce to, or deposit with, the Agent the receipts for all premiums and other payments necessary for effecting and keeping up each insurance policy maintained by it in accordance with clause 6.7.1.

6.9. No invalidation of insurance

The Guarantor shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any insurance policy maintained by it in accordance with clause 6.7.1.

6.10. Proceeds of insurance policies

All monies received or receivable by the Guarantor under any insurance policy maintained by it in accordance with clause 6.7.1 (including all monies received or receivable by it under any Insurance Policy) at any time (whether or not the security constituted by this deed has become enforceable) shall:

6.10.1. immediately be paid into a Designated Account;

6.10.2. if they are not paid directly to the Agent by the insurers, be held by the Guarantor as trustee of the same for the benefit of the Agent (and the Guarantor shall account for them to the Agent); and

6.10.3. be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received or, after the security constituted by this deed has become enforceable and if the Agent so directs, in or towards discharge or reduction of the Secured Liabilities.

6.11. Notices to be given by the Guarantor

The Guarantor shall immediately on the execution of this Deed (or, if later, the date of acquisition of the relevant Secured Asset):

6.11.1. give notice to each insurer that it has assigned its rights and interest in and under each Insurance Policy under clause 3.3.1 and procure that each addressee of any such notice promptly provides within five

Business Days to the Agent an acknowledgement of the notice of the Agent's interest;

- 6.11.2. give notice to each counterparty to a Relevant Agreement that it has assigned its rights and interest in and under that Relevant Agreement under clause 3.3.2 and procure that each addressee of any such notice promptly provides within five Business Days to the Agent an acknowledgement of the notice of the Agent's interest;
- 6.11.3. give notice to any bank, financial institution or other person (excluding the Agent) with whom it has an account that it has charged to the Agent its rights and interests under that account under clause 3.2.11 and procure that each addressee of any such notice promptly provides within five Business Days to the Agent an acknowledgement of the notice of the Agent's interest.

The Guarantor shall obtain the Agent's prior approval of the form of any notice or acknowledgement to be used under this clause 6.11.

6.12. Information

The Guarantor shall:

- 6.12.1. give the Agent such information concerning the location, condition, use and operation of the Secured Assets as the Agent may require;
- 6.12.2. permit any persons designated by the Agent and any Receiver to enter on its premises and inspect and examine any Secured Asset, and the records relating to that Secured Asset, at all reasonable times and on reasonable prior notice; and
- 6.12.3. promptly notify the Agent in writing of any action, claim or demand made by or against it in connection with any Secured Asset or of any fact, matter or circumstance which may, with the passage of time, give rise to such an action, claim or demand, together with, in each case, the Guarantor's proposals for settling, liquidating, compounding or contesting any such action, claim or demand and shall, subject to the Agent's prior approval, implement those proposals at its own expense.

6.13. Payment of outgoings

The Guarantor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to the Agent.

6.14. Appointment of accountants

6.14.1. The Guarantor shall:

- (a) at its own cost, if at any time so required by the Agent, appoint an accountant or firm of accountants nominated by the Agent to investigate the financial affairs of the Guarantor and those of its subsidiaries and report to the Agent; and
- (b) co-operate fully with any accountants so appointed and immediately provide those accountants with all information requested.

6.14.2. The Guarantor authorises the Agent to make an appointment as it shall think fit at any time, without further authority from the Guarantor. In every case, the Guarantor shall pay, or reimburse the Agent for, the fees and expenses of those accountants.

6.15. Guarantor's waiver of set-off

The Guarantor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Guarantor under this Deed).

7. **PROPERTY COVENANTS**

7.1. Maintenance

The Guarantor shall keep all buildings and all fixtures on each Property in good and substantial repair and condition.

7.2. Preservation of Property, fixtures and Equipment

The Guarantor shall not, without the prior written consent of the Agent:

- 7.2.1. pull down or remove the whole, or any part of, any building forming part of any Property or permit the same to occur;
- 7.2.2. make or permit any material alterations to any Property, or sever or remove, or permit to be severed or removed, any of its fixtures; or
- 7.2.3. remove or make any material alterations to any of the Equipment belonging to, or in use by, the Guarantor on any Property (except to effect necessary repairs or replace them with new or improved models or substitutes).

7.3. Conduct of business on Properties

The Guarantor shall carry on its trade and business on those parts (if any) of the Properties as are used for the purposes of trade or business in accordance with the standards of good management from time to time current in that trade or business.

7.4. Planning information

The Guarantor shall:

- 7.4.1. give full particulars to the Agent of any notice, order, direction, designation, Resolution or proposal given or made by any planning authority or other public body or authority ( "Planning Notice") that specifically applies to any Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Planning Notice; and
- 7.4.2. (if the Agent so requires) immediately, and at the cost of the Guarantor, take all reasonable and necessary steps to comply with any Planning Notice, and make, or join with the Agent in making, any objections or representations in respect of that Planning Notice that the Agent may desire.

7.5. Compliance with covenants and payment of rent

The Guarantor shall:

- 7.5.1. observe and perform all covenants, stipulations and conditions to which each Property, or the use of it, is or may be subjected, and (if the Agent so requires) produce evidence sufficient to satisfy the Agent that those covenants, stipulations and conditions have been observed and performed;
- 7.5.2. diligently enforce all covenants, stipulations and conditions benefiting each Property and shall not (and shall not agree to) waive release or vary any of the same; and
- 7.5.3. (without prejudice to the generality of the foregoing) where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time, and perform and observe all the tenant's covenants and conditions.

7.6. Payment of rent and outgoings

The Guarantor shall:

- 7.6.1. where a Property, or part of it, is held under a lease, duly and punctually pay all rents due from time to time; and
- 7.6.2. pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on each Property or on its occupier.

7.7. Maintenance of interests in Properties

The Guarantor shall not, without the prior written consent of the Agent:

- 7.7.1. grant, or agree to grant, any licence or tenancy affecting the whole or any part of any Property, or exercise, or agree to exercise, the

statutory powers of leasing or of accepting surrenders under sections 99 or 100 of the Law of Property Act 1925; or

7.7.2. in any other way dispose of, surrender or create, or agree to dispose of surrender or create, any legal or equitable estate or interest in the whole or any part of any Property.

7.8. Registration restrictions

If the title to any Property is not registered at the Land Registry, the Guarantor shall procure that no person (other than itself) shall be registered under the Land Registration Acts 1925 to 2002 as proprietor of all or any part of any Property without the prior written consent of the Agent. The Guarantor shall be liable for the costs and expenses of the Agent in lodging cautions against the registration of the title to the whole or any part of any Property from time to time.

7.9. Development restrictions

The Guarantor shall not, without the prior written consent of the Agent:

7.9.1. make or, insofar as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or

7.9.2. carry out, or permit, or suffer to be carried out on any Property any development as defined in the Town and Country Planning Act 1990 and the Planning Act 2008, or change or permit or suffer to be changed the use of any Property.

7.10. Environment

The Guarantor shall:

7.10.1. comply with all the requirements of Environmental Law both in the conduct of its general business and in the management, possession or occupation of each Property; and

7.10.2. obtain and comply with all authorisations, permits and other types of licences necessary under Environmental Law.

7.11. No restrictive obligations

The Guarantor shall not, without the prior written consent of the Agent, enter into any onerous or restrictive obligations affecting the whole or any part of any Property, or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of any Property.

7.12. Proprietary rights

The Guarantor shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of any Property without the prior written consent of the Agent.

7.13. Inspection

The Guarantor shall permit the Agent, any Receiver and any person appointed by either of them to enter on and inspect any Property on reasonable prior notice.

7.14. Property information

The Guarantor shall inform the Agent promptly of any acquisition by the Guarantor of, or contract made by the Guarantor to acquire, any freehold, leasehold or other interest in any property.

7.15. VAT option to tax

The Guarantor shall not, without the prior written consent of the Agent:

7.15.1. exercise any VAT option to tax in relation to any Property; or

7.15.2. revoke any VAT option to tax exercised, and disclosed to the Agent, before the date of this Deed.

7.15.3. Registration at the Land Registry

The Guarantor consents to an application being made by the Agent to the Land Registrar for the following restriction in Form P to be registered against its title to each Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [the date hereof] in favour of Salus Capital Partners LLC referred to in the charges register."

8. INVESTMENTS COVENANTS

8.1. Deposit of title documents

8.1.1. The Guarantor shall:

- (a) on the execution of this Deed, deposit with the Agent all stock or share certificates and other documents of title or evidence of ownership relating to any Investments owned by the Guarantor at that time; and
- (b) on the purchase or acquisition by it of Investments after the date of this Deed, deposit with the Agent all stock or share

certificates and other documents of title or evidence of ownership relating to those Investments.

8.1.2. At the same time as depositing documents with the Agent in accordance with clause 8.1.1(a) or clause 8.1.1(b), the Guarantor shall also deposit with the Agent:

- (a) all stock transfers forms relating to the relevant Investments duly completed and executed by or on behalf of the Guarantor, but with the name of the transferee, the consideration and the date left blank; and
- (b) any other documents (in each case duly completed and executed by or on behalf of the Guarantor) that the Agent may request in order to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Investments,

so that the Agent may, at any time and without notice to the Guarantor, complete and present those stock transfer forms and other documents to the issuer of the Investments for registration.

## 8.2. Nominations

8.2.1. The Guarantor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Investments and, pending that termination, procure that any person so nominated:

- (a) does not exercise any rights in respect of any Investments without the prior written approval of the Agent; and
- (b) immediately on receipt by it, forward to the Agent all communications or other information received by it in respect of any Investments for which it has been so nominated.

8.2.2. The Guarantor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Investments.

## 8.3. Additional registration obligations

The Guarantor shall:

8.3.1. obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association of any issuer that is not a public company or otherwise, for the transfer of the Investments to



the Agent or its nominee, or to a purchaser on enforcement of this Deed; and

- 8.3.2. procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) of the articles of association of each issuer that is not a public company in any manner that the Agent may require in order to permit such a transfer.

8.4. Dividends and voting rights before enforcement

- 8.4.1. Before the security constituted by this Deed becomes enforceable, the Guarantor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Investments and, if any are paid or payable to the Agent or any of its nominees, the Agent will hold all those dividends, interest and other monies received by it for the Guarantor and will pay them to the Guarantor promptly on request; and

- 8.4.2. Before the security constituted by this Deed becomes enforceable, the Guarantor may exercise all voting and other rights and powers in respect of the Investments or, if any of the same are exercisable by the Agent or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:

- (a) it shall not do so in any way that would breach any provision of the Credit Agreement, any of the other Loan Documents or this Deed or for any purpose inconsistent with the Credit Agreement, any of the other Loan Documents or this Deed; and

- (b) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in the Agent's opinion, have an adverse effect on the value of the Investments or otherwise prejudice the Agent's security under this Deed.

- 8.4.3. The Guarantor shall indemnify the Agent and each of the Lenders against any loss or liability incurred by the Agent or any Lenders (or its nominee) as a consequence of the Agent or any Lenders (or its nominee) acting in respect of the Investments at the direction of the Guarantor.

- 8.4.4. The Agent shall not by exercising or not exercising any voting rights or otherwise, on behalf of the Lenders, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Investments that the Agent considers prejudicial to, or impairing the value of, the security created by this Deed.

8.5. Dividends and voting rights after enforcement

After the security constituted by this Deed has become enforceable:

8.5.1. all dividends and other distributions paid in respect of the Investments and received by the Guarantor shall be held by the Guarantor on trust for the Agent and immediately paid into a Designated Account or, if received by the Agent, shall be retained by the Agent, and

8.5.2. all voting and other rights and powers attaching to the Investments shall be exercised by, or at the direction of, the Agent and the Guarantor shall, and shall procure that its nominees shall, comply with any directions the Agent may give, in its absolute discretion, concerning the exercise of those rights and powers.

8.6. Calls on Investments

The Guarantor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Investments. The Guarantor acknowledges none of the Agent or any of the Lenders shall be under any liability in respect of any such calls, instalments or other payments.

8.7. No alteration of constitutional documents or rights attaching to Investments

The Guarantor shall not, without the prior written consent of the Agent, amend, or agree to the amendment of:

8.7.1. the memorandum or articles of association, or any other constitutional documents, of any issuer that is not a public company; or

8.7.2. the rights or liabilities attaching to any of the Investments.

8.8. Preservation of Investments

The Guarantor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer that is not a public company shall not:

8.8.1. consolidate or subdivide any of its Investments, or reduce or re-organise its share capital in any way;

8.8.2. issue any new shares or stock; or

8.8.3. refuse to register any transfer of any of its Investments that may be lodged for registration by, or on behalf of, the Agent or the Guarantor in accordance with this Deed.

8.9. Investments information

The Guarantor shall, promptly following receipt, send to the Agent copies of any notice, circular, report, accounts and any other document received by it that relates to the Investments.

9. EQUIPMENT COVENANTS

9.1. Maintenance of Equipment

The Guarantor shall:

9.1.1. maintain the Equipment in good and serviceable condition (except for expected fair wear and tear) in compliance with all relevant manuals, handbooks, manufacturer's instructions and recommendations and maintenance or servicing schedules;

9.1.2. at its own expense, renew and replace any parts of the Equipment when they become obsolete, worn out or damaged with parts of a similar quality and of equal or greater value; and

9.1.3. not permit any Equipment to be:

(a) used or handled other than by properly qualified and trained persons; or

(b) overloaded or used for any purpose for which it is not designed or reasonably suitable.

9.2 Payment of Equipment taxes

The Guarantor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Equipment and, on demand, produce evidence of such payment to the Agent.

9.2. Notice of charge

The Guarantor:

9.2.1. shall, if so requested by the Agent, affix to and maintain on each item of Equipment in a conspicuous place, a clearly legible identification plate containing the following wording:

"NOTICE OF CHARGE

This [DESCRIBE ITEM] and all additions to it and ancillary equipment are subject to a fixed charge dated [the date hereof] in favour of Salus Capital Partners, LLC."

9.2.2. shall not, and shall not permit any person to, conceal, obscure, alter or remove any plate affixed in accordance with clause 9.3.1.

## 10. BOOK DEBTS COVENANTS

### 10.1. Realising Book Debts

The Guarantor shall:

10.1.1. as an agent for the Agent, for its own benefit and for the benefit of the Lenders, collect in and realise all Book Debts, pay the proceeds into a Designated Account immediately on receipt and, pending that payment, hold those proceeds in trust for the Agent;

10.1.2. not, without the prior written consent of the Agent, withdraw any amounts standing to the credit of any Designated Account; and 10.1.3 if called on to do so by the Agent, execute a legal assignment of the Book Debts to the Agent on such terms as the Agent may require and give notice of that assignment to the debtors from whom the Book Debts are due, owing or incurred.

### 10.2. Preservation of Book Debts

The Guarantor shall not (except as provided by clause 10.1 or with the prior written consent of the Agent ) release, exchange, compound, set-off, grant time or indulgence in respect of, or in any other manner deal with, all or any of the Book Debts,

## 11. RELEVANT AGREEMENTS COVENANTS

### 11.1. Relevant Agreements

The Guarantor shall, unless the Agent agrees otherwise in writing:

11.1.1. comply with the terms of;

11.1.2. not amend or vary or agree to any change in, or waive any requirement of;

11.1.3. not settle, compromise, terminate, rescind or discharge (except by performance); and

11.1.4. not abandon, waive, dismiss, release or discharge any action, claim or proceedings against any counterparty to a Relevant Agreement or other person in connection with,

any Relevant Agreement and any other document, agreement or arrangement comprising the Secured Assets (other than the Insurance Policies).

## 12. INTELLECTUAL PROPERTY COVENANTS

### 12.1. Preservation of rights

The Guarantor shall take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including (without limitation) by observing all covenants and stipulations relating to those rights, and by paying all applicable renewal fees, licence fees and other outgoings.

### 12.2. Registration of Intellectual Property

The Guarantor shall use all reasonable efforts to register applications for the registration of any Intellectual Property, and shall keep the Agent informed of all matters relating to each such registration.

### 12.3. Maintenance of Intellectual Property

The Guarantor shall not permit any Intellectual Property to be abandoned, cancelled or to lapse.

## 13. POWERS OF THE AGENT

### 13.1. Power to remedy

13.1.1. The Agent shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Guarantor of any of its obligations contained in this Deed.

13.1.2. The Guarantor irrevocably authorises the Agent and its agents to do all things that are necessary or desirable for that purpose. 13.1.3 Any monies expended by the Agent in remedying a breach by the Guarantor of its obligations contained in this Deed shall be reimbursed by the Guarantor to the Agent on a full indemnity basis and shall carry interest in accordance with clause 20.1.

### 13.2. Exercise of rights

The rights of the Agent under clause 13.1 are without prejudice to any other rights of the Agent under this Deed. The exercise of any rights of the Agent under this Deed shall not make the Agent liable to account as a mortgagee in possession.

### 13.3. Power to dispose of chattels

13.3.1. At any time after the security constituted by this deed has become enforceable, the Agent or any Receiver may, as agent for the Guarantor, dispose of any chattels or produce found on any Property.

13.3.2. Without prejudice to any obligation to account for the proceeds of any disposal made under clause 13.3.1, the Guarantor shall

indemnify the Agent and each of the Lenders and any Receiver against any liability arising from any disposal made under clause 13.3.1.

13.4. Agent has Receiver's powers

13.5. To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by the Agent in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver. Conversion of currency

13.5.1. For the purpose of or pending the discharge of, any of the Secured Liabilities, the Agent may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 13.5) from their existing currencies of denomination into any other currencies of denomination that the Agent may think fit.

13.5.2. Any such conversion shall be effected at the Agent's then prevailing spot selling rate of exchange for such other currency against the existing currency.

13.5.3. Each reference in this clause 13.5 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

13.6. New accounts

13.6.1. If the Agent receives, or is deemed to have received, notice of any subsequent Security Interest, or other interest, affecting all or part of the Secured Assets, the Agent may open a new account for the Guarantor in the Agent's books. Without prejudice to the Agent's right to combine accounts, no money paid to the credit of the Guarantor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.

13.6.2. if the Agent does not open a new account immediately on receipt of the notice, or deemed notice, under clause 13.6.1, then, unless the Agent gives express written notice to the contrary to the Guarantor, all payments made by the Guarantor to the Agent shall be treated as having been credited to a new account of the Guarantor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Agent.

13.7. Agent's set-off rights

If the Agent has more than one account for the Guarantor in its books, the Agent may at any time after:

13.7.1. the security constituted by this Deed has become enforceable; or

13.7.2. the Agent has received, or is deemed to have received, notice of any subsequent Security Interest or other interest affecting all or any part of the Secured Assets, transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Agent shall notify the Guarantor of that transfer.

13.8. Indulgence

The Agent may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Guarantor) in respect of any of the Secured liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Guarantor for the Secured Liabilities.

13.9. Appointment of an Administrator

13.9.1. The Agent may, without notice to the Guarantor, appoint any one or more persons to be an Administrator of the Guarantor pursuant to Paragraph 1.4 of Schedule BI of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.

13.9.2. Any appointment under this clause 13.9 shall:

- (a) be in writing signed by a duly authorised signatory of the Agent; and
- (b) take effect, in accordance with paragraph 19 of Schedule B 1 of the Insolvency Act 1986.

13.9.3. The Agent may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 13.9 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

**14. WHEN SECURITY BECOMES ENFORCEABLE**

14.1. Security becomes enforceable on Event of Default

The security constituted by this Deed shall be immediately enforceable if an Event of Default occurs.

14.2. Discretion

After the security constituted by this Deed has become enforceable, the Agent may, in its absolute discretion, enforce all or any part of that security

at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

**15. ENFORCEMENT OF SECURITY**

**15.1. Enforcement powers**

15.1.1. The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between the Agent and a purchaser from the Agent, arise on and be exercisable at any time after the execution of this Deed, but the Agent shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 14.1.

15.1.2. Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

**15.2. Extension of statutory powers of leasing**

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Agent and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Guarantor, to;

15.2.1. grant a lease or agreement to lease;

15.2.2. accept surrenders of leases; or

15.2.3. grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it, whether or not at a premium and containing such covenants on the part of the Guarantor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Agent or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

**15.3. Access on enforcement**

15.3.1. at any time after the Agent has demanded payment of the Secured Liabilities or if the Guarantor defaults in the performance of its obligations under this Deed or the Credit Agreement or any of the other Loan Documents, the Guarantor will allow the Agent or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Agent or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Guarantor for, or by any reason of, that entry.



15.3.2. at all times, the Guarantor must use its best endeavours to allow the Agent or its Receiver access to any premises for the purpose of clause 15.3.1 (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

15.4. Prior Security Interests

At any time after the security constituted. by this Deed has become enforceable, or after any powers conferred by any Security Interest having priority to this Deed shall have become exercisable, the Agent may:

15.4.1. redeem that or any other prior Security Interest;

15.4.2. procure the transfer of that Security Interest to it; and

15.4.3. settle and pass any account of the holder of any prior Security Interest. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Guarantor. All monies paid by the Agent to an encumbrance in settlement of any of those accounts shall, as from its payment by the Agent, be due from the Guarantor to the Agent on current account and shall bear interest at the Default Rate and be secured as part of the Secured Liabilities.

15.5. Protection of third parties

No purchaser, mortgagee or other person dealing with the Agent, any Receiver or Delegate shall be concerned to enquire:

15.5.1. whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

15.5.2. whether any power the Agent, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or

15.5.3. how any money paid to the Agent, any Lenders, any Receiver or any Delegate is to be applied.

15.6. Privileges

Each Receiver and the Agent is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

15.7. No liability as mortgagee in possession

None of the Agent, any Lender, any Receiver, any Delegate or any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

15.8. Conclusive discharge to purchasers

The receipt of the Agent or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Agent, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

15.9. Right of appropriation

15.9.1. To the extent that:

- (a) the Secured Assets constitute Financial Collateral; and
- (b) this Deed and the obligations of the Guarantor under it constitute a Security Financial Collateral Arrangement, t

the Agent shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Agent may, in its absolute discretion, determine.

15.9.2. The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that the Agent may select (including independent valuation).

15.9.3. The Guarantor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

16. RECEIVER

16.1. Appointment

At any time after the security constituted by this Deed has become enforceable, or at the request of the Guarantor, the Agent may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

16.2. Removal

The Agent may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

16.3. Remuneration

The Agent may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by the Agent.

16.4. Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Agent under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

16.5. Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Agent despite any prior appointment in respect of all or any part of the Secured Assets.

16.6. Agent of the Guarantor

Any Receiver appointed by the Agent under this Deed shall be the agent of the Guarantor and the Guarantor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Guarantor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Agent or any Lender.

17. **POWERS OF RECEIVER**

17.1. General

17.1.1. Any Receiver appointed by the Agent under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 17.2 to clause 17.23.

17.1.2. if there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of other Receiver.

17.1.3. Any exercise by a Receiver of any of the powers given by clause 17 may be on behalf of the Guarantor, the directors of the Guarantor (in the case of the power contained in clause 17.16) or himself.

17.2. Repair and develop Properties

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

## 17.3. Surrender leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

## 17.4. Employ personnel and advisors

A Receiver may provide services and employ, or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Guarantor.

## 17.5. Make VAT elections

A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.

## 17.6. Remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Agent may prescribe or agree with him.

## 17.7. Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

## 17.8. Manage or reconstruct the Guarantor's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Guarantor.

## 17.9. Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

## 17.10. Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Guarantor.

17.11. Sell Book Debts

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

17.12. Valid receipts

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

17.13. Make settlements

A Receiver may make any arrangement, settlement or compromise between the Guarantor and any other person that he may think expedient.

17.14. Bring proceedings

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.

17.15. Improve the Equipment

A Receiver may make substitutions of, or improvements to, the Equipment as he may think expedient.

17.16. Make calls on Guarantor members

A Receiver may make calls conditionally or unconditionally on the members of the Guarantor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Guarantor on its directors in respect of calls authorised to be made by them.

17.17. Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 20, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Guarantor under this Deed.

17.18. Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule I to the Insolvency Act 1986.

## 17.19. Borrow

A Receiver may, for any of the purposes authorised by this clause 17, raise money by borrowing from the Agent (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Agent consents, terms under which that security ranks in priority to this Deed).

## 17.20. Redeem prior Security Interests

A Receiver may redeem any prior Security Interest and settle and pass the accounts to which the Security Interest relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Guarantor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

## 17.21. Delegation

A Receiver may delegate his powers in accordance with this Deed.

## 17.22. Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

## 17.23. Incidental powers

A Receiver may do any other acts and things:

17.23.1. that he may consider desirable or necessary for realising any of the Secured Assets;

17.23.2. that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; and

17.23.3. that he lawfully may or can do as agent for the Guarantor.

## 18. DELEGATION

## 18.1. Delegation

The Agent or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 22.1).

## 18.2. Terms

The Agent and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

18.3. Liability

None of the Agent, any Lender or any Receiver shall be in any way liable or responsible to the Guarantor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

19. APPLICATION OF PROCEEDS

19.1. Order of application of proceeds

All monies received by the Agent, any Lenders, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LRA 1925) be applied in the following order of priority:

19.1.1. in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Agent (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;

19.1.2. in or towards payment of or provision for the Secured Liabilities in any order and manner that the Agent determines; and

19.1.3. in payment of the surplus (if any) to the Guarantor or other person entitled to it.

19.2. Appropriation

None of the Agent, any Lender, any Receiver or any Delegate shall be bound (whether by virtue of section 109(\$)) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

19.3. Suspense account

All monies received by the Agent, any Lender, a Receiver or a Delegate under this Deed:

19.3.1. may, at the discretion of the Agent, Receiver or Delegate, be credited to any suspense or securities realised account;

19.3.2. shall bear interest, if any, at the rate agreed in writing between the Agent and the Guarantor; and

19.3.3. may be held in that account for so long as the Agent, Receiver or Delegate thinks fit.

## 20. COSTS AND INDEMNITY

### 20.1. Costs

The Guarantor shall pay to, or reimburse, the Agent mid any Receiver on demand, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Agent, any Lender, any Receiver or any Delegate in connection with;

20.1.1. this Deed or the Secured Assets;

20.1.2. taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Agent's, a Receiver's or a Delegate's rights under this Deed;

20.1.3. taking proceedings for, or recovering, any of the Secured Liabilities, together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Guarantor) at the rate and in the manner specified in the Credit Agreement.

### 20.2. Indemnity

The Guarantor shall indemnify the Agent, each Credit Party, each Receiver and each Delegate, and their respective employees and agents, on a full indemnity basis against any cost, charge, expense, tax, loss, liability or damage incurred by any of them as a result of:

20.2.1. the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in then) under this deed or by law in respect of the Secured Assets;

20.2.2. taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or

20.2.3. any default or delay by the Guarantor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 20.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 21. FURTHER ASSURANCE

### 21.1. Further assurance



The Guarantor shall, at its own expense, take whatever action the Agent or any Receiver may reasonably require for:

21.1.1. creating, perfecting or protecting the security intended to be created by this Deed;

21.1.2. facilitating the realisation of any Secured Asset; or

21.1.3. facilitating the exercise of any right, power, authority or discretion exercisable by the Agent or any Receiver in respect of any Secured Asset,

including, without limitation (if the Agent or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Agent or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## 22. POWER OF ATTORNEY

### 22.1. Appointment of attorneys

By way of security, the Guarantor irrevocably appoints the Agent, every Receiver and every Delegate separately to be the attorney of the Guarantor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

22.1.1. the Guarantor is required to execute and do under this Deed; or

22.1.2. any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on the Agent, any Receiver or any Delegate.

### 22.2. Ratification of acts of attorneys

The Guarantor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 22.1.

## 23. RELEASE

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), the Agent shall, at the request and cost of the Guarantor, take whatever action is necessary to:

23.1.1. release the Secured Assets from the security constituted by this Deed; and

23.1.2. reassign the Secured Assets to the Guarantor.

**24. ASSIGNMENT AND TRANSFER****24.1. Assignment by Agent**

24.1.1. At any time, without the consent of the Guarantor, the Agent, for its own benefit or for the benefit of any of the Lenders, may assign or transfer the whole or any part of the respective rights of the Agent or any Lender and/or their obligations under this Deed to any person.

24.1.2. The Agent may disclose to any actual or proposed assignee or transferee any information about the Guarantor, the Secured Assets and this Deed that the Agent considers appropriate.

**24.2. Assignment by Guarantor**

The Guarantor may not assign any of its rights, or transfer any of its obligations, under this Deed, or enter into any transaction that would result in any of those rights or obligations passing to another person.

**25. FURTHER PROVISIONS****25.1. Independent security**

This Deed shall be in addition to, and independent of, any other security or guarantee that the Agent or any Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Agent or any Lender over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

**25.2. Continuing security**

This Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Agent discharges this Deed in writing.

**25.3. Discharge conditional**

Any release, discharge or settlement between the Guarantor and the Agent shall be deemed conditional on no payment or security received by the Agent in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

25.3.1. the Agent or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Agent deems necessary to provide the Agent with security against any such avoidance, reduction or order for refund; and

25.3.2. the Agent may recover the value or amount of such security or payment from the Guarantor subsequently as if the release, discharge or settlement had not occurred,

25.4. Certificates

A certificate or determination by the Agent as to any amount for the time being due to it from the Guarantor under this Deed and the Credit Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

25.5. Rights cumulative

The rights and remedies of the Agent and the Lender conferred by this Deed are cumulative, may be exercised as often as the Agent considers appropriate, and are in addition to its rights and remedies under the general law.

25.6. Variations and waivers

Any waiver or variation of any right or remedy by the Agent (whether arising under this deed or under the general law), or any consent given under this Deed, is only be effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.

25.7. Further exercise of rights

No act or course of conduct or negotiation by, or on behalf of, the Agent shall, in any way, preclude the Agent or any Lender from exercising any right or remedy under this Deed or constitute a suspension or variation of any such right or remedy.

25.8. Delay

No delay or failure to exercise any right or remedy under this Deed shall operate as a waiver of that right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of the Agent shall be effective unless it is in writing.

25.9. Single or partial exercise

No single or partial exercise of any right or remedy under this Deed shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this Deed.

25.10. Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

## 25.11. Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

## 25.12. Counterparts

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

## 26. NOTICES

## 26.1. Service

Each notice or other communication required to be given under, or in connection with, this Deed shall be:

26.1.1. in writing, delivered personally or sent by pre-paid first-class letter or fax; and

26.1.2. sent:

(a) to the Guarantor at:

Unit 10, Building 2, Canonbury Business Centre  
190a New North Road  
London  
NI 7BJ  
United Kingdom  
Fax: 1-905-660-0803  
Attention: Joseph Shilon

(b) to the Agent at:

197, First Avenue,  
Suite 250  
Needham Heights  
Boston, MA 02494-28146  
United States of America  
Fax: +1 781 459 0058  
Attention: Danielle Prentis

or to any other address or fax number as is notified in writing by one party to the other from time to time.

## 26.2. Receipt by Guarantor

Any notice or other communication that the Agent gives shall be deemed to have been received:

26.2.1. if sent by fax, when received in legible form;

26.2.2. if given by hand, at the time of actual delivery; and

26.2.3. if posted, on the second Business Day after the day it was sent by pre-paid first-class post. A notice or other communication given as described in clause 26.2.1 or clause 26.2.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

26.3. Receipt by Agent

Any notice or other communication given to the Agent shall be deemed to have been received only on actual receipt.

27. GOVERNING LAW AND JURISDICTION

27.1. Governing law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27.2. Jurisdiction

The parties to this Deed irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Agent, for its own benefit or for the benefit of the Lenders, to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

27.3. Other service

The Guarantor irrevocably consents to any process in any proceedings under clause 27.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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**SCHEDULE 1**

**PROPERTY**

**Part 1. Registered Property**

NONE AS AT THE DATE HEREOF

**Part 2. Unregistered Property**

NONE AS AT THE DATE HEREOF

**SCHEDULE 2**  
**RELEVANT AGREEMENTS**

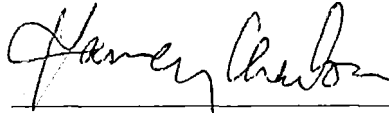
Type of contract: Lease Agreement  
Date: February 2, 2005  
Parties: J.S.N. Jewellery UK Limited and Canonbury Limited

EXECUTED and delivered as a deed )  
by J.S.N. JEWELLERY UK LIMITED )  
acting by one director in the )  
presence of a witness )



Director

Witness signature:



Witness name:

HARVEY CHAITON

Witness address:

5000 YONGE ST, 10th floor

Toronto, Ontario M2N 7E9

Witness occupation:

LAWYER

EXECUTED and delivered as a deed )  
by SALUS CAPITAL PARTNERS )  
LLC acting by two authorised )  
representatives )

Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

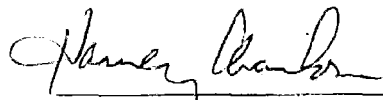


EXECUTED and delivered as a deed )  
by J.S.N. JEWELLERY UK LIMITED )  
acting by one director in the )  
presence of a witness )

  
\_\_\_\_\_

Director

Witness signature:

  
\_\_\_\_\_

Witness name:

HARVEY CHAITON  
\_\_\_\_\_

Witness address:

5050 YONGE ST, 10<sup>th</sup> FLOOR  
TORONTO, ONTARIO M2N 7E9  
\_\_\_\_\_

Witness occupation:

LAWYER  
\_\_\_\_\_

EXECUTED and delivered as a deed )  
by SALUS CAPITAL PARTNERS )  
LLC acting by two authorised )  
representatives )

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_



**TAB P**



Attached is Exhibit "P" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





## GUARANTEE AGREEMENT

GUARANTEE AGREEMENT (this "Guarantee"), dated as of May 16, 2016, by Always & Forever Family Collection Incorporated, an Ontario company with its principal place of business at 64 Jardin Drive, Unit 4, Concord, Ontario L4K 3P3 (the "Guarantor") in favor of (a) SALUS CAPITAL PARTNERS, LLC, as administrative agent and collateral agent (in such capacities, the "Agent") for its own benefit and the benefit of the other Credit Parties (as defined in the DIP Credit Agreement referred to below), and (b) the other Credit Parties.

### WITNESSETH

WHEREAS, reference is made to that certain Credit Agreement dated July 18, 2013 (as amended, modified, supplemented or restated hereafter, the "Credit Agreement"), by and between, among others, (i) J.S.N. Jewellery Inc., a Canadian corporation (the "Lead Borrower"), (ii) the other Borrowers party thereto from time to time, (iii) the Agent, and (iv) the Lenders party thereto from time to time (the "Lenders"). Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, one or more Events of Default have occurred under the Credit Agreement, the Agent has issued demands to all Credit Parties and notices of intention to enforce security to all Loan Parties.

WHEREAS, the Credit Parties and certain Affiliates thereof have entered into an Accommodation Agreement with the Agent, dated the date hereof (the "Accommodation Agreement"), pursuant to which the Agent has agreed to forbear, the Lenders have agreed to continue to fund the Borrowers pursuant to the Credit Agreement, and Salus CLO 2012-1, Ltd. (the "DIP Lender") has agreed to provide further extensions of credit to Ben Moss Jewellers Western Canada Ltd. ("Ben Moss") pursuant to a debtor-in-possession credit agreement (the "DIP Credit Agreement"), which would be Overadvances under the Credit Agreement, to allow Ben Moss to continue to operate during its anticipated proceedings under the Companies' Creditors' Arrangement Act (the "CCAA Proceedings") and to allow the Loan Parties other than Ben Moss to remain outside the CCAA Proceedings.

WHEREAS, the Guarantor acknowledges that it will receive direct and indirect benefits from the availability of the credit facility provided for in the Credit Agreement (as amended by the Accommodation Agreement), from the making of the Loans by the Lenders, and the availability of the credit facility provided for in the DIP Credit Agreement, from the making of the loans by the DIP Lender.

WHEREAS, the obligations of the Lenders and the DIP Lender to make Loans are each conditioned upon, among other things, the execution and delivery by the Guarantor of a guarantee in the form hereof. As consideration therefor, and in order to induce the Lenders and the DIP Lender to make Loans, the Guarantor is willing to execute this Guarantee.

Accordingly, the Guarantor hereby agrees as follows:

SECTION 1. Guarantee. The Guarantor irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the due and punctual payment when due (whether at the stated maturity, by required prepayment, by acceleration or otherwise) and performance by the Borrowers of each and all of their Obligations under the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents (under both the Credit Agreement and the DIP Credit Agreement), including, without limitation, the principal amount of the Obligations (under both the Credit Agreement and the DIP Credit Agreement), all interest and fees





thereon and any other Obligations related thereto (collectively, the "Guaranteed Obligations"). The Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon this Guarantee notwithstanding any extension or renewal of any Guaranteed Obligation.

SECTION 2. Demand by Agent; Limitation. Upon failure by the Borrowers punctually to pay any Guaranteed Obligation when due, or upon the occurrence of any other Event of Default under the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement, the Agent may make demand upon the Guarantor for the payment of such Guaranteed Obligation and the Guarantor binds and obliges itself to make such payment forthwith upon such demand. All obligations of the Guarantor shall be payable or performable forthwith upon demand by the Agent, and any which are not so paid shall bear interest from the date of such demand at the rate or rates applicable to the corresponding Guaranteed Obligations.

SECTION 3. Guaranteed Obligations Not Affected. To the fullest extent permitted by applicable Law, the Guarantor waives presentment to, demand of payment from, and protest to, any Loan Party of any of the Guaranteed Obligations, and also waives notice of acceptance of this Guarantee, notice of protest for nonpayment and all other notices of any kind (except as expressly set forth in SECTION 2 above). To the fullest extent permitted by applicable Law, the obligations of the Guarantor hereunder shall not be affected by (a) the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any Loan Party under the provisions of the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement, any other Loan Document or otherwise or against any other party with respect to any of the Guaranteed Obligations, (b) any rescission, waiver, amendment or modification of, or any release from, any of the terms or provisions of this Guarantee, any other Loan Document or any other agreement, with respect to any Loan Party or with respect to the Guaranteed Obligations, (c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Agent or any other Credit Party, or (d) the lack of legal existence of any Loan Party or legal obligation to discharge any of the Guaranteed Obligations by any Loan Party for any reason whatsoever, including, without limitation, in any insolvency, bankruptcy or reorganization of any Loan Party.

SECTION 4. Security. The Guarantor hereby acknowledges and agrees that the Agent and each of the other Credit Parties may (a) take and hold security for the payment of this Guarantee and the Guaranteed Obligations and exchange, enforce, waive and release any such security, (b) apply such security and direct the order or manner of sale thereof as they in their sole discretion may determine, and (c) release or substitute any one or more endorsees, the Borrowers, other Guarantors or other obligors, in each case without affecting or impairing in any way the liability of the Guarantor hereunder.

SECTION 5. Guarantee of Payment. The Guarantor further agrees that this Guarantee constitutes a guarantee of payment and performance when due of all Guaranteed Obligations and not of collection and, to the fullest extent permitted by applicable Law, waives any right to require that any resort be had by the Agent or any other Credit Party to any of the Collateral or other security held for payment of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Agent or any other Credit Party in favor of any Loan Party or any other Person or to any other guarantor of all or part of the Guaranteed Obligations. Any payment required to be made by the Guarantor hereunder may be required by any Agent or any other Credit Party on any number of occasions and shall be payable to the Agent, for the benefit of the Agent and the other Credit Parties, in the manner provided in the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement.



**SECTION 6. Indemnification.** The Guarantor shall indemnify the Credit Parties and each of their Subsidiaries and Affiliates, and each of their respective stockholders, directors, officers, employees, agents, attorneys, and advisors (each such Person being called an "Indemnitee"), against, and hold each Indemnitee harmless from, any and all damages, actual out-of-pocket losses, claims, actions, causes of action, settlement payments, obligations, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred, suffered, sustained or required to be paid by, or asserted against, any Indemnitee arising out of, in any way connected with, or as a result of, (i) the execution or delivery of this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or any other Loan Document or any other agreement or instrument contemplated hereby, the performance by the Guarantor of their respective obligations thereunder, or the consummation of the transactions contemplated by the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents or any other transactions contemplated hereby or thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to or arising from any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided, however, such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by a Borrower, any other Loan Party or any other guarantor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers, such Loan Party or the Guarantor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. In connection with any indemnified claim hereunder, the Indemnitee shall be entitled to select its own counsel and the Guarantor shall promptly pay the reasonable fees and expenses of such counsel.

**SECTION 7. Guarantee Absolute.** Without limiting the generality of SECTION 3, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any lack of genuineness, legality, validity or enforceability of any of the Guaranteed Obligations or of any agreement or arrangement between any Borrower, or any other Person, and any one or more of the Credit Parties, or any failure by any Borrower or any other Person, to carry out any of its obligations under any such agreement or arrangement;

(b) any change in the existence, name, objects, business, powers, organization, share capital, organizational documents, ownership, control, directors or management of any Borrower, the Guarantor or any surety, the reorganization of any Borrower, the Guarantor or any surety, any amalgamation or merger by the Borrower, the Guarantor or any surety with any other Person or Persons, or any continuation of the Borrower, the Guarantor, or any surety under the laws of any jurisdiction;

(c) any change in the nature of or cessation of the duties performed by the Guarantor for or on behalf of any Loan Party;

(d) any lack or limitation of power, incapacity or disability of any Borrower, the Guarantor or any surety or of the directors, officers, managers, employees or agents of any Borrower, the Guarantor or any surety or any other irregularity, defect or informality, or any fraud, by any Borrower, the Guarantor or any surety or any of their respective directors, officers, managers, employees or



agents, with respect to any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(e) any non-compliance with or contravention by the Guarantor of any provision of any corporate statute applicable to the Guarantor relative to guarantees or other financial assistance given by the Guarantor;

(f) any impossibility, impracticability, frustration of purpose, force majeure or act of Governmental Authority with respect to the performance of any of the Guaranteed Obligations or Guarantor Liabilities;

(g) any bankruptcy or insolvency proceeding affecting, or the financial condition of, any Borrower, the Guarantor, any surety, any Credit Party or any other Person at any time;

(h) might otherwise be a defence available to, or a discharge of, any Borrower, the Guarantor or any surety in respect of any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(i) any loss of, or in respect of, any security by or on behalf of any Credit Party from any Borrower, the Guarantor, any surety or any other Person, whether occasioned through the fault of any Credit Party or otherwise;

(j) any loss or impairment of any right of the Guarantor for subrogation, reimbursement or contribution, whether or not as a result of any action taken or omitted to be taken by any Credit Party; or

(k) any other matter, act, omission, circumstance, development or thing of any and every nature, kind and description whatsoever, whether similar or dissimilar to the foregoing (other than the due payment and performance in full of the Guaranteed Obligations) that might in any manner (but for the operation of this provision) operate (whether by statute, at law, in equity or otherwise) to release, discharge, diminish, limit, restrict or in any way affect the liability of, or otherwise provide a defence to, a guarantor, a surety, or a principal debtor, even if known by the Agent or any one or more of the other Credit Parties.

**SECTION 8. Dealing with Borrower Liabilities.** Without limiting SECTION 7, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent and the other Credit Parties under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any amendment, alteration, novation or variation in any manner and to any extent (and irrespective of the effect of the same on the Guarantor) of any of the Guaranteed Obligations, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with the Borrower, any surety or any other Person;

(b) any limitation, compromise, subordination, postponement or abandonment of any of the Guaranteed Obligations, any of the obligations of the Guarantor hereunder, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with any Borrower, any surety or any other Person;

(c) any grant of time, renewal, extension, indulgence, release, discharge or other course of conduct by any one or more Credit Parties to the Borrower, any surety or any other Person;



(d) the creation of any new or additional Guaranteed Obligations, the increase or reduction of the rate of interest on any or all of the Guaranteed Obligations or any other rates or fees payable under or in respect of any or all of the Guaranteed Obligations;

(e) any alteration, settlement, compromise, acceleration, extension or change in the time or manner for payment or performance by any Borrower made or permitted by any one or more Credit Parties of, or by any other Person or Persons liable to any one or more of the Credit Parties with respect to, any or all of the Guaranteed Obligations;

(f) the Credit Parties or any of them taking or abstaining from taking security from the Borrower, the Guarantor, any surety or any other Person or abstaining from completing, perfecting or maintaining the perfection of any Collateral;

(g) the Credit Parties or any of them releasing, substituting or adding one or more sureties or endorsers, accepting additional or substituted Security, or releasing, subordinating or postponing any Collateral;

(h) the Credit Parties or any of them accepting compromises from any Borrower, any surety or any other Person;

(i) the creation or addition of any new Loan Documents, or the addition of any new Credit Parties pursuant to the provisions of any Loan Documents;

(j) the Credit Parties or any of them doing, or omitting to do, anything to enforce the payment or performance of any or all of the Guaranteed Obligations, any or all of the liabilities and obligations of any surety or any Security Document;

(k) the Credit Parties or any of them giving or refusing to give or continuing to give any credit or any financial accommodation to any Borrower or to any other Person;

(l) the Credit Parties or any of them proving any claim in any insolvency proceeding affecting any Borrower, the Guarantor, any surety or any other Person as they see fit or refraining from proving any claim or permitting or suffering the impairment of any of the Guaranteed Obligations in any such insolvency proceeding; making any election in any such insolvency proceeding; permitting or suffering the creation of secured or unsecured credit or debt in any such insolvency proceeding; or permitting or suffering the disallowance, avoidance, or subordination of any of the Guaranteed Obligations or the obligations of any other debtor with respect to the Guaranteed Obligations in any such insolvency proceeding;

(m) the Credit Parties or any of them applying any money received from the Borrower, the Guarantor, any surety, any other Person or from the Collateral upon such part of the Guaranteed Obligations as the Credit Parties or any of them may see fit or changing any such application in whole or in part from time to time as the Credit Parties or any of them may see fit; or

(n) the Credit Parties or any of them otherwise dealing with any Borrower, the Guarantor, any surety, any other Person, the Guaranteed Obligations, the liabilities and obligations of any sureties, and all Collateral as the Credit Parties or any of them may see fit.

SECTION 9. Settlement of Accounts. Any account settled or stated between the Agent or any other Credit Party and any Borrower shall be accepted by the Guarantor as *prima facie* evidence that the amount thereby appearing due by any Borrower to the Agent or such other Credit Party is so due.





SECTION 10. Payment Indemnity. If any or all of the Guaranteed Obligations are not duly paid or performed by any Borrower and are not paid or performed by the Guarantor under SECTION 2 for any reason whatsoever, the Guarantor shall, as a separate and distinct obligation, indemnify and save each of the Credit Parties harmless from and against all losses, costs, damages, expenses, claims and liabilities that each such Credit Party may suffer or incur in connection with or in respect of any failure by the Borrowers for any reason to pay or perform any of the Guaranteed Obligations, and shall pay all such amounts to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 11. Guarantor Liable as Principal Borrower. If, and to the extent that, any amount in respect of the Guaranteed Obligations is not recoverable from the Guarantor under this Agreement on the basis of a guarantee or the Credit Parties are not indemnified under SECTION 10, in each case, for any reason whatsoever, then, notwithstanding any other provision of this Agreement, the Guarantor shall be liable under this Agreement as principal obligor in respect of the due payment of such amount and shall pay such amount to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 12. Stay of Acceleration. If acceleration of the time for payment, or the liability of any Borrower to make payment, of any amount specified to be payable by any Borrower in respect of the Guaranteed Obligations is stayed, prohibited or otherwise affected upon any insolvency proceeding or other event affecting any Borrower or payment of any of the Guaranteed Obligations by any Borrower, all such amounts otherwise subject to acceleration or payment shall nonetheless be deemed for all purposes of this Agreement to be and to have become due and payable by the Borrowers and shall be payable by the Guarantor under this Agreement immediately forthwith on demand by the Agent.

SECTION 13. Borrower Information. The Guarantor acknowledges and agrees that the Guarantor has not executed this Agreement as a result of, by reason of, or in reliance upon, any promise, representation, statement or information of any kind or nature whatsoever given, or offered to the Guarantor, by or on behalf of the Credit Parties or any other Person whether in answer to any enquiry by or on behalf of the Guarantor or not and the Credit Parties were not prior to the execution by the Guarantor of this Agreement, and are not thereafter, under any duty to disclose to the Guarantor or any other Person any information, matter or thing (material or otherwise) relating to any Borrower, its affairs or its transactions with the Credit Parties, including any information, matter or thing which puts or may put any Borrower in a position which the Guarantor would not naturally expect or any unexpected facts or unusual features which, whether known or unknown to the Guarantor, are present in any transaction between the Borrower and the Credit Parties, and the Credit Parties were not and are not under any duty to do or execute any matter, thing or document relating to any Borrower, its affairs or its transactions with the Credit Parties. The Guarantor acknowledges and confirms that it has established its own adequate means of obtaining from any Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of any Borrower and that the Guarantor will look to the Borrowers, and not to the Agent or any other Credit Party, in order for the Guarantor to keep adequately informed of changes in any Borrower's financial condition.

SECTION 14. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Agent or any other Credit Party has at law or in equity against the Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Agent or such other Credit Party as designated thereby in cash the amount of such unpaid Guaranteed Obligations. Upon payment by the Guarantor of any sums to the Agent or any other Credit Party as provided above, all rights of the Guarantor against any Loan Party or any other



Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of the Borrowers or any other Loan Party or any other Guarantor now or hereafter held by the Guarantor is hereby subordinated in right of payment to the prior indefeasible payment in full in cash of all of the Guaranteed Obligations. After the occurrence and during the continuance of an Event of Default, the Guarantor will not demand, sue for, or otherwise attempt to collect any such indebtedness until the indefeasible payment in full in cash of the Guaranteed Obligations, termination or expiration of the Commitments. If any amount shall erroneously be paid to the Guarantor on account of (a) such subrogation, contribution, reimbursement, indemnity or similar right or (b) any such indebtedness, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement, the DIP Credit Agreement and the Accommodation Agreement.

SECTION 15. Limitation on Guarantee of Guaranteed Obligations. In any action or proceeding with respect to the Guarantor involving any corporate law or any applicable bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the Guarantor under SECTION 1 hereof would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under said SECTION 1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by the Guarantor, any Credit Party, the Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 16. Information. The Guarantor assumes all responsibility for being and keeping itself informed of each Loan Party's and each other Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that none of the Agent or the other Credit Parties will have any duty to advise any of the Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 17. Termination. This Guarantee (a) shall terminate when (i) the Commitments shall have expired or been terminated, and the principal of and interest on each Loan and all fees and other Guaranteed Obligations shall have been paid in full, or (ii) a payment by Guarantor to Agent of an amount equal to the Sums Owed has been made following a demand by Agent pursuant to the terms of SECTION 2 of this Guarantee (the "Payment") and (b) shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation or the Payment is rescinded or must otherwise be restored by any Credit Party or the Guarantor upon the bankruptcy or reorganization of any Loan Party or any other Guarantor or otherwise.

SECTION 18. Costs of Enforcement. Without duplication of any fees or expenses provided for under the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or the other Loan Documents, the Guarantor agrees to pay on demand all Credit Party Expenses in connection with (i) the administration, negotiation, documentation or amendment of this Guarantee, and (ii) the Agent's or any other Credit Party's efforts to collect and/or to enforce any of the Guaranteed Obligations of the Guarantor hereunder and/or to enforce any of the rights, remedies, or powers of the Agent or any other Credit Party against or in respect of the Guarantor (whether or not suit is instituted by or against the Agent or any other Credit Party).



SECTION 19. Assignments. This Guarantee shall inure to the benefit of the Agent and the other Credit Parties, and their respective successors and assigns. The Guarantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such attempted assignment or transfer shall be void), except as expressly permitted by this Guarantee or the Credit Agreement.

SECTION 20. Waivers; Amendment.

(a) The rights, remedies, powers, privileges, and discretion of the Agent hereunder and under applicable Law (herein, the "Agent's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agents in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any Person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Agent may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Guaranteed Obligations. No waiver of any provisions of this Guarantee or any other Loan Document or consent to any departure by the Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case shall entitle the Guarantor or any other Guarantor to any other or further notice or demand in the same, similar or other circumstances.

(b) Neither this Guarantee nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Agent and the Guarantor, subject to any consent required in accordance with SECTION 10.01 of the Credit Agreement.

SECTION 21. Copies and Facsimiles. This instrument and all documents which have been or may be hereinafter furnished by the Guarantor to the Agent may be reproduced by the Agent by any photographic, microfilm, xerographic, digital imaging, or other process. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile or other electronic transmission which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise so admissible in evidence as if the original of such facsimile or other electronic transmission had been delivered to the party which or on whose behalf such transmission was received.

SECTION 22. Foreign Currency Guarantor Liabilities. The Guarantor shall make payment relative to any Guaranteed Obligations in the currency (the "Original Currency") in which the Borrower is required to pay such Guaranteed Obligations. If the Guarantor makes payment relative to any Guaranteed Obligations in a currency (the "Other Currency") other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment shall constitute a discharge of the Guarantor Liabilities only to the extent of the amount of the Original Currency which the Agent is able to purchase with the amount it receives on the date of receipt. If the amount of the Original Currency which the Agent is able to purchase is less than the amount of such currency originally due to it in respect to the relevant Guaranteed



Obligations, the Guarantor shall indemnify and save the Agent and the other Credit Parties harmless from and against any loss or damage arising as a result of such deficiency. This indemnity constitutes an obligation separate and independent from the other obligations contained in this Agreement, gives rise to a separate and independent cause of action, applies irrespective of any indulgence granted by the Agent or any other Credit Party and continues in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

SECTION 23. Taxes and Set-Off. All payments to be made by the Guarantor hereunder shall be made without set off, compensation, deduction or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time any applicable Law requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor with respect to such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent receives a net sum equal to the sum which it would have received had no deduction or withholding been required.

SECTION 24. Time. Time is of the essence with respect to this Agreement and the time for performance of the obligations of the Guarantor under this Agreement may be strictly enforced by the Agent. The limitation period applicable to any proceeding relating to a claim under, in connection with, or with respect to this Agreement shall be solely as prescribed in sections 15-17 of the *Limitations Act, 2002* (Ontario), and any other limitation period in respect of such claim (including that provided for in section 4 of the *Limitations Act, 2002* (Ontario)) is extended accordingly.

SECTION 25. Governing Law. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 26. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in SECTION 10.02 of the Credit Agreement, provided that communications and notices to the Guarantor may be delivered to the Lead Borrower on behalf of the Guarantor.

SECTION 27. Survival of Agreement; Severability.

(a) All covenants, agreements, indemnities, representations and warranties made by the Guarantor herein and in the certificates or other instruments delivered in connection with or pursuant to this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or any other Loan Document shall be considered to have been relied upon by the Agent and the other Credit Parties and shall survive the execution and delivery of this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents and the making of any Loans by the Lenders, regardless of any investigation made by the Agent or any other Credit Party or on their behalf and notwithstanding that the or other Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended, and shall continue in full force and effect until terminated as provided in SECTION 17 hereof. The provisions of SECTION 6 and SECTION 18 hereof shall survive and remain in full force and effect regardless of the repayment of the Guaranteed Obligations, the expiration or termination of the Commitments or the termination of this Guarantee or any provision hereof.

(b) Any provision of this Guarantee 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.

SECTION 28. Counterparts. This Guarantee may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Guarantee by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Guarantee.

SECTION 29. Rules of Interpretation. The rules of interpretation specified in SECTIONS 1.02 through 1.05 of the Credit Agreement shall be applicable to this Guarantee.

SECTION 30. Jurisdiction; Consent to Service of Process.

(a) The Guarantor agrees that any suit for the enforcement of this Guarantee or any other Loan Document may be brought in the courts of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the non-exclusive jurisdiction of such courts. Each party to this Guarantee hereby waives any objection which it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Guarantee shall affect any right that the Agent or any other Credit Party may otherwise have to bring any action or proceeding relating to this Guarantee against a Guarantor or its properties in the courts of any jurisdiction.

(b) The Guarantor agrees that any action commenced by the Guarantor asserting any claim or counterclaim arising under or in connection with this Guarantee or any other Loan Document shall be brought solely in a court of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the exclusive jurisdiction of such courts with respect to any such action.

(c) Each party to this Guarantee irrevocably consents to service of process in the manner provided for notices in SECTION 26. Nothing in this Guarantee or any other Loan Document will affect the right of any party to this Guarantee to serve process in any other manner permitted by law.


SECTION 31. 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 GUARANTEE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING; AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. 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 WAIVERS, AND (B) ACKNOWLEDGES THAT THE AGENT AND THE OTHER CREDIT PARTIES HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 31.



IN WITNESS WHEREOF, the Guarantor has duly executed this Guarantee as of the day and year first above written.

GUARANTOR:

ALWAYS & FOREVER FAMILY COLLECTION  
INCORPORATED

  
Name: Joseph Chilon  
Title:



Accepted:

**SALUS CAPITAL PARTNERS, LLC, as Agent**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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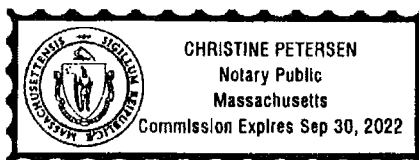
**TAB Q**



Attached is Exhibit "Q" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





**JOINDER TO CANADIAN GENERAL SECURITY AGREEMENT**

**THIS JOINDER AGREEMENT** (this "**Joinder Agreement**") is entered into as of May 16, 2016 by Always & Forever Family Collection Incorporated (the "**New Grantor**") in favour of Salus Capital Partners, LLC, in its capacity as collateral agent under the Security Agreement defined below (the "**Collateral Agent**").

**RECITALS:**

A. Reference is made to the Canadian General Security Agreement (the "**Security Agreement**") dated as of July 18, 2013 entered into by J.S.N. Jewellery Inc., 2373138 Ontario Inc. and Ben Moss Jewellers Western Canada Ltd. and certain of their affiliates which thereafter signs a joinder agreement, in favour of the Collateral Agent.

B. Capitalized terms used but not otherwise defined in this Joinder have the respective meanings given to such terms in the Security Agreement, including the definitions of terms incorporated in the Security Agreement by reference to other agreements.

C. Section 3.6 of the Security Agreement provides that additional Persons may from time to time after the date of the Security Agreement become Grantors under the Security Agreement by executing and delivering to the Collateral Agent a joinder agreement to the Security Agreement in the form of this Joinder Agreement.

D. The undersigned (the "**New Grantor**") has agreed to become a Grantor under the Security Agreement by executing and delivering this Joinder Agreement to the Collateral Agent.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the New Grantor, the New Grantor agrees with and in favour of the Collateral Agent as follows:

1. The New Grantor has received a copy of, and has reviewed, the Security Agreement and is executing and delivering this Joinder Agreement to the Collateral Agent pursuant to Section 3.6 of the Security Agreement.

2. Effective from and after the date this Joinder Agreement is executed and delivered to the Collateral Agent by the New Grantor:

- (a) the New Grantor shall be, and shall be deemed for all purposes to be, a Grantor under the Security Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and security interests, as if the New Grantor had been, as of the date of this Joinder Agreement, an original signatory to the Security Agreement as a Grantor; and
- (b) all Collateral of the New Grantor shall be subject to the security interests granted by the New Grantor as security for the due payment and performance of the Secured Obligations of the New Grantor in accordance with the provisions of the Security Agreement.

In furtherance of the foregoing, the New Grantor, as general and continuing collateral security for the due payment and performance of its Secured Obligations, pledges, mortgages, charges and assigns (by way of security) to the Collateral Agent, and grants to the Collateral Agent a security interest in, the Collateral of the New Grantor. The terms and provisions of the Security Agreement are incorporated by reference in this Joinder Agreement.





3. The New Grantor represents and warrants to the Collateral Agent that each of the representations and warranties made or deemed to have been made by it under the Security Agreement as a Grantor are true and correct on the date of this Joinder Agreement.

4. All of the information set out in Schedules I, II and III to this Joinder Agreement with respect to the New Grantor is accurate and complete as of the date of this Joinder Agreement.

5. Upon this Joinder Agreement bearing the signature of any Person claiming to have authority to bind the New Grantor coming into the possession of the Collateral Agent, this Joinder Agreement and the Security Agreement shall be deemed to be finally and irrevocably executed and delivered by, and be effective and binding on, and enforceable against, the New Grantor free from any promise or condition affecting or limiting the liabilities of the New Grantor. No statement, representation, agreement or promise by any officer, employee or agent of the Collateral Agent, unless expressly set forth in this Joinder Agreement, forms any part of this Joinder Agreement or has induced the New Grantor to enter into this Joinder Agreement and the Security Agreement or in any way affects any of the agreements, obligations or liabilities of the New Grantor under this Joinder Agreement and the Security Agreement.

6. Delivery of an executed signature page to this Joinder Agreement by the New Grantor by facsimile or other electronic transmission shall be as effective as delivery by the New Grantor of a manually executed copy of this Joinder Agreement by the New Grantor.

7. This Joinder 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 Joinder Agreement and the Security Agreement shall be binding upon the New Grantor and its successors. The New Grantor shall not assign its rights and obligations under this Joinder Agreement or the Security Agreement, or any of its rights or obligations in this Joinder Agreement or the Security Agreement.

*[remainder of page intentionally left blank; signature page follows]*



IN WITNESS WHEREOF, the New Grantor has caused this Joinder Agreement to be duly executed by its authorized officer as of the date first above written.

ALWAYS & FOREVER FAMILY COLLECTION  
INCORPORATED

By: 

Name: Joseph Shilow

Title: \_\_\_\_\_



SCHEDULE I  
Intercompany Notes



SCHEDULE II

Filings, Registrations and Recordings





## SCHEDULE III

## Securities Collateral

<u>Grantor</u>	<u>Issuer</u>	<u>Type</u> <u>Organization</u>	<u>of</u>	<u># of Shares</u> <u>Owned</u>	<u>Total Shares</u> <u>Outstanding</u>	<u>%</u> <u>Interest</u> <u>Pledged</u>	<u>of</u>	<u>Certificate</u> <u>(if uncertificated,</u> <u>please indicate</u> <u>so)</u>	<u>No.</u> <u>indicate</u>
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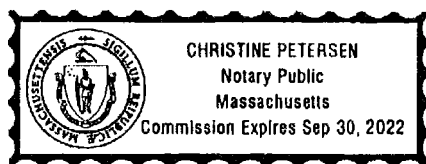
**TAB R**



Attached is Exhibit "R" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





## GUARANTEE AGREEMENT

GUARANTEE AGREEMENT (this "Guarantee"), dated as of May 16, 2016, by P.M.R. INC., an Ontario company with its principal place of business at 64 Jardin Drive, Unit 4, Concord, Ontario L4K 3P3 (the "Guarantor") in favor of (a) SALUS CAPITAL PARTNERS, LLC, as administrative agent and collateral agent (in such capacities, the "Agent") for its own benefit and the benefit of the other Credit Parties (as defined in the DIP Credit Agreement referred to below), and (b) the other Credit Parties.

### WITNESSETH

WHEREAS, reference is made to that certain Credit Agreement dated July 18, 2013 (as amended, modified, supplemented or restated hereafter, the "Credit Agreement"), by and between, among others, (i) J.S.N. Jewellery Inc., a Canadian corporation (the "Lead Borrower"), (ii) the other Borrowers party thereto from time to time, (iii) the Agent, and (iv) the Lenders party thereto from time to time (the "Lenders"). Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

WHEREAS, one or more Events of Default have occurred under the Credit Agreement, the Agent has issued demands to all Credit Parties and notices of intention to enforce security to all Loan Parties.

WHEREAS, the Credit Parties and certain Affiliates thereof have entered into an Accommodation Agreement with the Agent, dated the date hereof (the "Accommodation Agreement"), pursuant to which the Agent has agreed to forbear, the Lenders have agreed to continue to fund the Borrowers pursuant to the Credit Agreement, and Salus CLO 2012-1, Ltd. (the "DIP Lender") has agreed to provide further extensions of credit to Ben Moss Jewellers Western Canada Ltd. ("Ben Moss") pursuant to a debtor-in-possession credit agreement (the "DIP Credit Agreement"), which would be Overadvances under the Credit Agreement, to allow Ben Moss to continue to operate during its anticipated proceedings under the Companies' Creditors' Arrangement Act (the "CCAA Proceedings") and to allow the Loan Parties other than Ben Moss to remain outside the CCAA Proceedings.

WHEREAS, the Guarantor acknowledges that it will receive direct and indirect benefits from the availability of the credit facility provided for in the Credit Agreement (as amended by the Accommodation Agreement), from the making of the Loans by the Lenders, and the availability of the credit facility provided for in the DIP Credit Agreement, from the making of the loans by the DIP Lender.

WHEREAS, the obligations of the Lenders and the DIP Lender to make Loans are each conditioned upon, among other things, the execution and delivery by the Guarantor of an guarantee in the form hereof. As consideration therefor, and in order to induce the Lenders and the DIP Lender to make Loans, the Guarantor is willing to execute this Guarantee.

Accordingly, the Guarantor hereby agrees as follows:

SECTION 1. Guarantee. The Guarantor irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the due and punctual payment when due (whether at the stated maturity, by required prepayment, by acceleration or otherwise) and performance by the Borrowers of each and all of their Obligations under the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents (under both the Credit Agreement and the DIP Credit Agreement), including, without limitation, the principal amount of the Obligations (under both the Credit Agreement and the DIP Credit Agreement), all interest and fees





thereon and any other Obligations related thereto (collectively, the "Guaranteed Obligations"). The Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon this Guarantee notwithstanding any extension or renewal of any Guaranteed Obligation.

SECTION 2. Demand by Agent; Limitation. Upon failure by the Borrowers punctually to pay any Guaranteed Obligation when due, or upon the occurrence of any other Event of Default under the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement, the Agent may make demand upon the Guarantor for the payment of such Guaranteed Obligation and the Guarantor binds and obliges itself to make such payment forthwith upon such demand. All obligations of the Guarantor shall be payable or performable forthwith upon demand by the Agent, and any which are not so paid shall bear interest from the date of such demand at the rate or rates applicable to the corresponding Guaranteed Obligations.

SECTION 3. Guaranteed Obligations Not Affected. To the fullest extent permitted by applicable Law, the Guarantor waives presentment to, demand of payment from, and protest to, any Loan Party of any of the Guaranteed Obligations, and also waives notice of acceptance of this Guarantee, notice of protest for nonpayment and all other notices of any kind (except as expressly set forth in SECTION 2 above). To the fullest extent permitted by applicable Law, the obligations of the Guarantor hereunder shall not be affected by (a) the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any Loan Party under the provisions of the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement, any other Loan Document or otherwise or against any other party with respect to any of the Guaranteed Obligations, (b) any rescission, waiver, amendment or modification of, or any release from, any of the terms or provisions of this Guarantee, any other Loan Document or any other agreement, with respect to any Loan Party or with respect to the Guaranteed Obligations, (c) the failure to perfect any security interest in, or the release of, any of the Collateral held by or on behalf of the Agent or any other Credit Party, or (d) the lack of legal existence of any Loan Party or legal obligation to discharge any of the Guaranteed Obligations by any Loan Party for any reason whatsoever, including, without limitation, in any insolvency, bankruptcy or reorganization of any Loan Party.

SECTION 4. Security. The Guarantor hereby acknowledges and agrees that the Agent and each of the other Credit Parties may (a) take and hold security for the payment of this Guarantee and the Guaranteed Obligations and exchange, enforce, waive and release any such security, (b) apply such security and direct the order or manner of sale thereof as they in their sole discretion may determine, and (c) release or substitute any one or more endorsees, the Borrowers, other Guarantors or other obligors, in each case without affecting or impairing in any way the liability of the Guarantor hereunder.

SECTION 5. Guarantee of Payment. The Guarantor further agrees that this Guarantee constitutes a guarantee of payment and performance when due of all Guaranteed Obligations and not of collection and, to the fullest extent permitted by applicable Law, waives any right to require that any resort be had by the Agent or any other Credit Party to any of the Collateral or other security held for payment of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of the Agent or any other Credit Party in favor of any Loan Party or any other Person or to any other guarantor of all or part of the Guaranteed Obligations. Any payment required to be made by the Guarantor hereunder may be required by any Agent or any other Credit Party on any number of occasions and shall be payable to the Agent, for the benefit of the Agent and the other Credit Parties, in the manner provided in the Credit Agreement, the DIP Credit Agreement or the Accommodation Agreement.



SECTION 6. Indemnification. The Guarantor shall indemnify the Credit Parties and each of their Subsidiaries and Affiliates, and each of their respective stockholders, directors, officers, employees, agents, attorneys, and advisors (each such Person being called an "Indemnatee"), against, and hold each Indemnatee harmless from, any and all damages, actual out-of-pocket losses, claims, actions, causes of action, settlement payments, obligations, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnatee, incurred, suffered, sustained or required to be paid by, or asserted against, any Indemnatee arising out of, in any way connected with, or as a result of, (i) the execution or delivery of this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or any other Loan Document or any other agreement or instrument contemplated hereby, the performance by the Guarantor of their respective obligations thereunder, or the consummation of the transactions contemplated by the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents or any other transactions contemplated hereby or thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to or arising from any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided, however, such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by a Borrower, any other Loan Party or any other guarantor against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrowers, such Loan Party or the Guarantor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. In connection with any indemnified claim hereunder, the Indemnatee shall be entitled to select its own counsel and the Guarantor shall promptly pay the reasonable fees and expenses of such counsel.

SECTION 7. Guarantee Absolute. Without limiting the generality of SECTION 3, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any lack of genuineness, legality, validity or enforceability of any of the Guaranteed Obligations or of any agreement or arrangement between any Borrower, or any other Person, and any one or more of the Credit Parties, or any failure by any Borrower or any other Person, to carry out any of its obligations under any such agreement or arrangement;

(b) any change in the existence, name, objects, business, powers, organization, share capital, organizational documents, ownership, control, directors or management of any Borrower, the Guarantor or any surety, the reorganization of any Borrower, the Guarantor or any surety, any amalgamation or merger by the Borrower, the Guarantor or any surety with any other Person or Persons, or any continuation of the Borrower, the Guarantor, or any surety under the laws of any jurisdiction;

(c) any change in the nature of or cessation of the duties performed by the Guarantor for or on behalf of any Loan Party;

(d) any lack or limitation of power, incapacity or disability of any Borrower, the Guarantor or any surety or of the directors, officers, managers, employees or agents of any Borrower, the Guarantor or any surety or any other irregularity, defect or informality, or any fraud, by any Borrower, the Guarantor or any surety or any of their respective directors, officers, managers, employees or



agents, with respect to any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(e) any non-compliance with or contravention by the Guarantor of any provision of any corporate statute applicable to the Guarantor relative to guarantees or other financial assistance given by the Guarantor;

(f) any impossibility, impracticability, frustration of purpose, force majeure or act of Governmental Authority with respect to the performance of any of the Guaranteed Obligations or Guarantor Liabilities;

(g) any bankruptcy or insolvency proceeding affecting, or the financial condition of, any Borrower, the Guarantor, any surety, any Credit Party or any other Person at any time;

(h) might otherwise be a defence available to, or a discharge of, any Borrower, the Guarantor or any surety in respect of any or all of the Guaranteed Obligations, any or all of the obligations of the Guarantor hereunder or any or all of the liabilities and obligations of any surety;

(i) any loss of, or in respect of, any security by or on behalf of any Credit Party from any Borrower, the Guarantor, any surety or any other Person, whether occasioned through the fault of any Credit Party or otherwise;

(j) any loss or impairment of any right of the Guarantor for subrogation, reimbursement or contribution, whether or not as a result of any action taken or omitted to be taken by any Credit Party; or

(k) any other matter, act, omission, circumstance, development or thing of any and every nature, kind and description whatsoever, whether similar or dissimilar to the foregoing (other than the due payment and performance in full of the Guaranteed Obligations) that might in any manner (but for the operation of this provision) operate (whether by statute, at law, in equity or otherwise) to release, discharge, diminish, limit, restrict or in any way affect the liability of, or otherwise provide a defence to, a guarantor, a surety, or a principal debtor, even if known by the Agent or any one or more of the other Credit Parties.

**SECTION 8. Dealing with Borrower Liabilities.** Without limiting SECTION 7, the obligations of the Guarantor hereunder shall remain fully effective and enforceable against the Guarantor and shall not be released, exonerated, discharged, diminished, subjected to defence, limited or in any way affected by, and the rights and remedies of the Agent and the other Credit Parties under this Agreement shall not in any way be diminished or prejudiced by, and the Guarantor hereby consents to or waives, as applicable, to the fullest extent permitted by applicable Law:

(a) any amendment, alteration, novation or variation in any manner and to any extent (and irrespective of the effect of the same on the Guarantor) of any of the Guaranteed Obligations, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with the Borrower, any surety or any other Person;

(b) any limitation, compromise, subordination, postponement or abandonment of any of the Guaranteed Obligations, any of the obligations of the Guarantor hereunder, any of the liabilities and obligations of any surety, any Security or any one or more of the Credit Parties' arrangements or agreements with any Borrower, any surety or any other Person;

(c) any grant of time, renewal, extension, indulgence, release, discharge or other course of conduct by any one or more Credit Parties to the Borrower, any surety or any other Person;



(d) the creation of any new or additional Guaranteed Obligations, the increase or reduction of the rate of interest on any or all of the Guaranteed Obligations or any other rates or fees payable under or in respect of any or all of the Guaranteed Obligations;

(e) any alteration, settlement, compromise, acceleration, extension or change in the time or manner for payment or performance by any Borrower made or permitted by any one or more Credit Parties of, or by any other Person or Persons liable to any one or more of the Credit Parties with respect to, any or all of the Guaranteed Obligations;

(f) the Credit Parties or any of them taking or abstaining from taking security from the Borrower, the Guarantor, any surety or any other Person or abstaining from completing, perfecting or maintaining the perfection of any Collateral;

(g) the Credit Parties or any of them releasing, substituting or adding one or more sureties or endorsers, accepting additional or substituted Security, or releasing, subordinating or postponing any Collateral;

(h) the Credit Parties or any of them accepting compromises from any Borrower, any surety or any other Person;

(i) the creation or addition of any new Loan Documents, or the addition of any new Credit Parties pursuant to the provisions of any Loan Documents;

(j) the Credit Parties or any of them doing, or omitting to do, anything to enforce the payment or performance of any or all of the Guaranteed Obligations, any or all of the liabilities and obligations of any surety or any Security Document;

(k) the Credit Parties or any of them giving or refusing to give or continuing to give any credit or any financial accommodation to any Borrower or to any other Person;

(l) the Credit Parties or any of them proving any claim in any insolvency proceeding affecting any Borrower, the Guarantor, any surety or any other Person as they see fit or refraining from proving any claim or permitting or suffering the impairment of any of the Guaranteed Obligations in any such insolvency proceeding; making any election in any such insolvency proceeding; permitting or suffering the creation of secured or unsecured credit or debt in any such insolvency proceeding; or permitting or suffering the disallowance, avoidance, or subordination of any of the Guaranteed Obligations or the obligations of any other debtor with respect to the Guaranteed Obligations in any such insolvency proceeding;

(m) the Credit Parties or any of them applying any money received from the Borrower, the Guarantor, any surety, any other Person or from the Collateral upon such part of the Guaranteed Obligations as the Credit Parties or any of them may see fit or changing any such application in whole or in part from time to time as the Credit Parties or any of them may see fit; or

(n) the Credit Parties or any of them otherwise dealing with any Borrower, the Guarantor, any surety, any other Person, the Guaranteed Obligations, the liabilities and obligations of any sureties, and all Collateral as the Credit Parties or any of them may see fit.

SECTION 9. Settlement of Accounts. Any account settled or stated between the Agent or any other Credit Party and any Borrower shall be accepted by the Guarantor as *prima facie* evidence that the amount thereby appearing due by any Borrower to the Agent or such other Credit Party is so due.





SECTION 10. Payment Indemnity. If any or all of the Guaranteed Obligations are not duly paid or performed by any Borrower and are not paid or performed by the Guarantor under SECTION 2 for any reason whatsoever, the Guarantor shall, as a separate and distinct obligation, indemnify and save each of the Credit Parties harmless from and against all losses, costs, damages, expenses, claims and liabilities that each such Credit Party may suffer or incur in connection with or in respect of any failure by the Borrowers for any reason to pay or perform any of the Guaranteed Obligations, and shall pay all such amounts to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 11. Guarantor Liable as Principal Borrower. If, and to the extent that, any amount in respect of the Guaranteed Obligations is not recoverable from the Guarantor under this Agreement on the basis of a guarantee or the Credit Parties are not indemnified under SECTION 10, in each case, for any reason whatsoever, then, notwithstanding any other provision of this Agreement, the Guarantor shall be liable under this Agreement as principal obligor in respect of the due payment of such amount and shall pay such amount to the Agent after demand as herein provided up to an amount not exceeding the Sums Owed.

SECTION 12. Stay of Acceleration. If acceleration of the time for payment, or the liability of any Borrower to make payment, of any amount specified to be payable by any Borrower in respect of the Guaranteed Obligations is stayed, prohibited or otherwise affected upon any insolvency proceeding or other event affecting any Borrower or payment of any of the Guaranteed Obligations by any Borrower, all such amounts otherwise subject to acceleration or payment shall nonetheless be deemed for all purposes of this Agreement to be and to have become due and payable by the Borrowers and shall be payable by the Guarantor under this Agreement immediately forthwith on demand by the Agent.

SECTION 13. Borrower Information. The Guarantor acknowledges and agrees that the Guarantor has not executed this Agreement as a result of, by reason of, or in reliance upon, any promise, representation, statement or information of any kind or nature whatsoever given, or offered to the Guarantor, by or on behalf of the Credit Parties or any other Person whether in answer to any enquiry by or on behalf of the Guarantor or not and the Credit Parties were not prior to the execution by the Guarantor of this Agreement, and are not thereafter, under any duty to disclose to the Guarantor or any other Person any information, matter or thing (material or otherwise) relating to any Borrower, its affairs or its transactions with the Credit Parties, including any information, matter or thing which puts or may put any Borrower in a position which the Guarantor would not naturally expect or any unexpected facts or unusual features which, whether known or unknown to the Guarantor, are present in any transaction between the Borrower and the Credit Parties, and the Credit Parties were not and are not under any duty to do or execute any matter, thing or document relating to any Borrower, its affairs or its transactions with the Credit Parties. The Guarantor acknowledges and confirms that it has established its own adequate means of obtaining from any Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of any Borrower and that the Guarantor will look to the Borrowers, and not to the Agent or any other Credit Party, in order for the Guarantor to keep adequately informed of changes in any Borrower's financial condition.

SECTION 14. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that the Agent or any other Credit Party has at law or in equity against the Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Agent or such other Credit Party as designated thereby in cash the amount of such unpaid Guaranteed Obligations. Upon payment by the Guarantor of any sums to the Agent or any other Credit Party as provided above, all rights of the Guarantor against any Loan Party or any other



Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of the Borrowers or any other Loan Party or any other Guarantor now or hereafter held by the Guarantor is hereby subordinated in right of payment to the prior indefeasible payment in full in cash of all of the Guaranteed Obligations. After the occurrence and during the continuance of an Event of Default, the Guarantor will not demand, sue for, or otherwise attempt to collect any such indebtedness until the indefeasible payment in full in cash of the Guaranteed Obligations, termination or expiration of the Commitments. If any amount shall erroneously be paid to the Guarantor on account of (a) such subrogation, contribution, reimbursement, indemnity or similar right or (b) any such indebtedness, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement, the DIP Credit Agreement and the Accommodation Agreement.

SECTION 15. Limitation on Guarantee of Guaranteed Obligations. In any action or proceeding with respect to the Guarantor involving any corporate law or any applicable bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the Guarantor under SECTION 1 hereof would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under said SECTION 1, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by the Guarantor, any Credit Party, the Agent or any other Person, be automatically limited and reduced to the highest amount which is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 16. Information. The Guarantor assumes all responsibility for being and keeping itself informed of each Loan Party's and each other Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that none of the Agent or the other Credit Parties will have any duty to advise any of the Guarantor of information known to it or any of them regarding such circumstances or risks.

SECTION 17. Termination. This Guarantee (a) shall terminate when (i) the Commitments shall have expired or been terminated, and the principal of and interest on each Loan and all fees and other Guaranteed Obligations shall have been paid in full, or (ii) a payment by Guarantor to Agent of an amount equal to the Sums Owed has been made following a demand by Agent pursuant to the terms of SECTION 2 of this Guarantee (the "Payment") and (b) shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation or the Payment is rescinded or must otherwise be restored by any Credit Party or the Guarantor upon the bankruptcy or reorganization of any Loan Party or any other Guarantor or otherwise.

SECTION 18. Costs of Enforcement. Without duplication of any fees or expenses provided for under the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or the other Loan Documents, the Guarantor agrees to pay on demand all Credit Party Expenses in connection with (i) the administration, negotiation, documentation or amendment of this Guarantee, and (ii) the Agent's or any other Credit Party's efforts to collect and/or to enforce any of the Guaranteed Obligations of the Guarantor hereunder and/or to enforce any of the rights, remedies, or powers of the Agent or any other Credit Party against or in respect of the Guarantor (whether or not suit is instituted by or against the Agent or any other Credit Party).



SECTION 19. Assignments. This Guarantee shall inure to the benefit of the Agent and the other Credit Parties, and their respective successors and assigns. The Guarantor shall not have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such attempted assignment or transfer shall be void), except as expressly permitted by this Guarantee or the Credit Agreement.

SECTION 20. Waivers; Amendment.

(a) The rights, remedies, powers, privileges, and discretion of the Agent hereunder and under applicable Law (herein, the "Agent's Rights and Remedies") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Agents in exercising or enforcing any of the Agent's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Agent of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Agent's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Agent and any Person, at any time, shall preclude the other or further exercise of the Agent's Rights and Remedies. No waiver by the Agent of any of the Agent's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Agent's Rights and Remedies may be exercised at such time or times and in such order of preference as the Agent may determine. The Agent's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Guaranteed Obligations. No waiver of any provisions of this Guarantee or any other Loan Document or consent to any departure by the Guarantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case shall entitle the Guarantor or any other Guarantor to any other or further notice or demand in the same, similar or other circumstances.

(b) Neither this Guarantee nor any provision hereof may be waived, amended or modified except pursuant to a written agreement entered into between the Agent and the Guarantor, subject to any consent required in accordance with SECTION 10.01 of the Credit Agreement.

SECTION 21. Copies and Facsimiles. This instrument and all documents which have been or may be hereinafter furnished by the Guarantor to the Agent may be reproduced by the Agent by any photographic, microfilm, xerographic, digital imaging, or other process. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile or other electronic transmission which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise so admissible in evidence as if the original of such facsimile or other electronic transmission had been delivered to the party which or on whose behalf such transmission was received.

SECTION 22. Foreign Currency Guarantor Liabilities. The Guarantor shall make payment relative to any Guaranteed Obligations in the currency (the "Original Currency") in which the Borrower is required to pay such Guaranteed Obligations. If the Guarantor makes payment relative to any Guaranteed Obligations in a currency (the "Other Currency") other than the Original Currency (whether voluntarily or pursuant to an order or judgment of a court or tribunal of any jurisdiction), such payment shall constitute a discharge of the Guarantor Liabilities only to the extent of the amount of the Original Currency which the Agent is able to purchase with the amount it receives on the date of receipt. If the amount of the Original Currency which the Agent is able to purchase is less than the amount of such currency originally due to it in respect to the relevant Guaranteed



Obligations, the Guarantor shall indemnify and save the Agent and the other Credit Parties harmless from and against any loss or damage arising as a result of such deficiency. This indemnity constitutes an obligation separate and independent from the other obligations contained in this Agreement, gives rise to a separate and independent cause of action, applies irrespective of any indulgence granted by the Agent or any other Credit Party and continues in full force and effect notwithstanding any judgment or order in respect of any amount due hereunder or under any judgment or order.

SECTION 23. Taxes and Set-Off. All payments to be made by the Guarantor hereunder shall be made without set off, compensation, deduction or counterclaim and without deduction for any taxes, levies, duties, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever. If at any time any applicable Law requires the Guarantor to make any such deduction or withholding from any such payment, the sum due from the Guarantor with respect to such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Agent receives a net sum equal to the sum which it would have received had no deduction or withholding been required.

SECTION 24. Time. Time is of the essence with respect to this Agreement and the time for performance of the obligations of the Guarantor under this Agreement may be strictly enforced by the Agent. The limitation period applicable to any proceeding relating to a claim under, in connection with, or with respect to this Agreement shall be solely as prescribed in sections 15-17 of the *Limitations Act, 2002* (Ontario), and any other limitation period in respect of such claim (including that provided for in section 4 of the *Limitations Act, 2002* (Ontario)) is extended accordingly.

SECTION 25. Governing Law. THIS GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

SECTION 26. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in SECTION 10.02 of the Credit Agreement, provided that communications and notices to the Guarantor may be delivered to the Lead Borrower on behalf of the Guarantor.

SECTION 27. Survival of Agreement; Severability.

(a) All covenants, agreements, indemnities, representations and warranties made by the Guarantor herein and in the certificates or other instruments delivered in connection with or pursuant to this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement or any other Loan Document shall be considered to have been relied upon by the Agent and the other Credit Parties and shall survive the execution and delivery of this Guarantee, the Credit Agreement, the DIP Credit Agreement, the Accommodation Agreement and the other Loan Documents and the making of any Loans by the Lenders, regardless of any investigation made by the Agent or any other Credit Party or on their behalf and notwithstanding that the or other Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended, and shall continue in full force and effect until terminated as provided in SECTION 17 hereof. The provisions of SECTION 6 and SECTION 18 hereof shall survive and remain in full force and effect regardless of the repayment of the Guaranteed Obligations, the expiration or termination of the Commitments or the termination of this Guarantee or any provision hereof.

(b) Any provision of this Guarantee 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.

SECTION 28. Counterparts. This Guarantee may be executed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Guarantee by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Guarantee.

SECTION 29. Rules of Interpretation. The rules of interpretation specified in SECTIONS 1.02 through 1.05 of the Credit Agreement shall be applicable to this Guarantee.

SECTION 30. Jurisdiction; Consent to Service of Process.

(a) The Guarantor agrees that any suit for the enforcement of this Guarantee or any other Loan Document may be brought in the courts of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the non-exclusive jurisdiction of such courts. Each party to this Guarantee hereby waives any objection which it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient forum and agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Guarantee shall affect any right that the Agent or any other Credit Party may otherwise have to bring any action or proceeding relating to this Guarantee against a Guarantor or its properties in the courts of any jurisdiction.

(b) The Guarantor agrees that any action commenced by the Guarantor asserting any claim or counterclaim arising under or in connection with this Guarantee or any other Loan Document shall be brought solely in a court of the Province of Ontario, as the Agent may elect in its sole discretion, and consents to the exclusive jurisdiction of such courts with respect to any such action.

(c) Each party to this Guarantee irrevocably consents to service of process in the manner provided for notices in SECTION 26. Nothing in this Guarantee or any other Loan Document will affect the right of any party to this Guarantee to serve process in any other manner permitted by law.

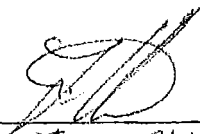
SECTION 31. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTEE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) AND WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING; AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. 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 WAIVERS, AND (B) ACKNOWLEDGES THAT THE AGENT AND THE OTHER CREDIT PARTIES HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION 31.



IN WITNESS WHEREOF, the Guarantor has duly executed this Guarantee as of the day and year first above written.

GUARANTOR:

P.M.R. INC.



Name:  
Title:

*JOSEPH SHICAN*



Accepted:

**SALUS CAPITAL PARTNERS, LLC, as Agent**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



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**TAB S**



Attached is Exhibit "S" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





## JOINDER TO CANADIAN GENERAL SECURITY AGREEMENT

THIS JOINDER AGREEMENT (this "**Joinder Agreement**") is entered into as of May 16, 2016 by P.M.R. Inc. (the "**New Grantor**") in favour of Salus Capital Partners, LLC, in its capacity as collateral agent under the Security Agreement defined below (the "**Collateral Agent**").

### RECITALS:

A. Reference is made to the Canadian General Security Agreement (the "**Security Agreement**") dated as of July 18, 2013 entered into by J.S.N. Jewellery Inc., 2373138 Ontario Inc. and Ben Moss Jewellers Western Canada Ltd. and certain of their affiliates which thereafter signs a joinder agreement, in favour of the Collateral Agent.

B. Capitalized terms used but not otherwise defined in this Joinder have the respective meanings given to such terms in the Security Agreement, including the definitions of terms incorporated in the Security Agreement by reference to other agreements.

C. Section 3.6 of the Security Agreement provides that additional Persons may from time to time after the date of the Security Agreement become Grantors under the Security Agreement by executing and delivering to the Collateral Agent a joinder agreement to the Security Agreement in the form of this Joinder Agreement.

D. The undersigned (the "**New Grantor**") has agreed to become a Grantor under the Security Agreement by executing and delivering this Joinder Agreement to the Collateral Agent.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the New Grantor, the New Grantor agrees with and in favour of the Collateral Agent as follows:

1. The New Grantor has received a copy of, and has reviewed, the Security Agreement and is executing and delivering this Joinder Agreement to the Collateral Agent pursuant to Section 3.6 of the Security Agreement.

2. Effective from and after the date this Joinder Agreement is executed and delivered to the Collateral Agent by the New Grantor:

- (a) the New Grantor shall be, and shall be deemed for all purposes to be, a Grantor under the Security Agreement with the same force and effect, and subject to the same agreements, representations, indemnities, liabilities, obligations and security interests, as if the New Grantor had been, as of the date of this Joinder Agreement, an original signatory to the Security Agreement as a Grantor; and
- (b) all Collateral of the New Grantor shall be subject to the security interests granted by the New Grantor as security for the due payment and performance of the Secured Obligations of the New Grantor in accordance with the provisions of the Security Agreement.

In furtherance of the foregoing, the New Grantor, as general and continuing collateral security for the due payment and performance of its Secured Obligations, pledges, mortgages, charges and assigns (by way of security) to the Collateral Agent, and grants to the Collateral Agent a security interest in, the Collateral of the New Grantor. The terms and provisions of the Security Agreement are incorporated by reference in this Joinder Agreement.

3. The New Grantor represents and warrants to the Collateral Agent that each of the representations and warranties made or deemed to have been made by it under the Security Agreement as a Grantor are true and correct on the date of this Joinder Agreement.



4. All of the information set out in Schedules I, II and III to this Joinder Agreement with respect to the New Grantor is accurate and complete as of the date of this Joinder Agreement.

5. Upon this Joinder Agreement bearing the signature of any Person claiming to have authority to bind the New Grantor coming into the possession of the Collateral Agent, this Joinder Agreement and the Security Agreement shall be deemed to be finally and irrevocably executed and delivered by, and be effective and binding on, and enforceable against, the New Grantor free from any promise or condition affecting or limiting the liabilities of the New Grantor. No statement, representation, agreement or promise by any officer, employee or agent of the Collateral Agent, unless expressly set forth in this Joinder Agreement, forms any part of this Joinder Agreement or has induced the New Grantor to enter into this Joinder Agreement and the Security Agreement or in any way affects any of the agreements, obligations or liabilities of the New Grantor under this Joinder Agreement and the Security Agreement.

6. Delivery of an executed signature page to this Joinder Agreement by the New Grantor by facsimile or other electronic transmission shall be as effective as delivery by the New Grantor of a manually executed copy of this Joinder Agreement by the New Grantor.

7. This Joinder 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 Joinder Agreement and the Security Agreement shall be binding upon the New Grantor and its successors. The New Grantor shall not assign its rights and obligations under this Joinder Agreement or the Security Agreement, or any of its rights or obligations in this Joinder Agreement or the Security Agreement.

*[remainder of page intentionally left blank; signature page follows]*





IN WITNESS WHEREOF, the New Grantor has caused this Joinder Agreement to be duly executed by its authorized officer as of the date first above written.

P.M.R. INC.

By: 

Name: JOSEPH SHILON

Title: \_\_\_\_\_



SCHEDULE I  
Intercompany Notes



SCHEDULE II

Filings, Registrations and Recordings



## SCHEDULE III

## Securities Collateral

<u>Grantor</u>	<u>Issuer</u>	<u>Type</u> of <u>Organization</u>	<u># of Shares</u> <u>Owned</u>	<u>Total Shares</u> <u>Outstanding</u>	<u>%</u> of <u>Interest</u> <u>Pledged</u>	<u>Certificate</u> <u>No.</u> <u>(if uncertificated,</u> <u>please indicate</u> <u>so)</u>
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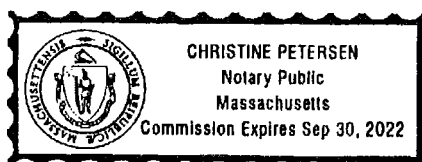
**TAB T**



Attached is Exhibit "T" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





# **SUPER PRIORITY DIP CREDIT AGREEMENT**

**Dated as of May 16, 2016**

among

**BEN MOSS JEWELLERS WESTERN CANADA LTD.**  
as the Borrower

and

**THE GUARANTORS NAMED HEREIN**

and

**SALUS CAPITAL PARTNERS, LLC**  
as Administrative Agent and Collateral Agent

and

**THE OTHER LENDERS PARTY HERETO**

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**SUPER PRIORITY DIP CREDIT AGREEMENT**

**THIS SUPER PRIORITY DIP CREDIT AGREEMENT** (“Agreement”) is entered into as of May 16, 2016

**AMONG:**

**BEN MOSS JEWELLERS WESTERN CANADA LTD.**,  
a company existing under the laws of the Province of Manitoba (the “**Borrower**”),

**the Persons listed on the signature page hereto and executing this Agreement as a Guarantor**  
(collectively the “**Guarantors**”),

**each Lender from time to time party hereto, and**

**SALUS CAPITAL PARTNERS, LLC**,  
as Administrative Agent and Collateral Agent

The Borrower has filed or intends on filing for protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceedings**”) and obtaining an initial order by the Ontario Superior Court of Justice, Commercial List sitting in Toronto (the “**Court**”). The Borrower continues to operate its business and manage its properties as a debtor-in-possession company. The Borrower has requested that the Lenders continue to extend credit to it and to provide a senior secured super priority revolving debtor in possession credit facility, and certain other financial accommodations of credit, in each case on the terms and conditions set forth herein.

All Obligations of the Loan Parties to the Lenders hereunder and under the other Loan Documents shall be full recourse to each of the Loan Parties.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“**Acceptable Document of Title**” means, with respect to any Inventory, a tangible, negotiable bill of lading, negotiable cargo receipt or other “*document of title*” (as defined in the PPSA) that (a) is issued by a common carrier or consolidator which is not an Affiliate of any Loan Party which is in actual possession of such Inventory, (b) is issued to the order of or consigned to a Loan Party or to the order of the Agent, (c) is not subject

to any Lien (other than in favour of the Agent), and (d) is on terms otherwise reasonably acceptable to the Agent. The Loan Parties will use commercially reasonable efforts to have the Agent named as a notify party on all such negotiable bills of lading, negotiable cargo receipts or other documents of title.

**“Accommodation Payment”** as defined in Section 10.22(a).

**“Account”** means *“accounts”* as defined in the PPSA and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, or (e) arising out of the use of a credit or charge card or information contained on or for use with the card.

**“Accounting Firm”** means a nationally-recognized chartered accountant firm acceptable to Agent and independent of the Loan Parties.

**“ACH”** means automated clearing house transfers.

**“Administrative Questionnaire”** means an Administrative Questionnaire in a form supplied by the Agent.

**“Affiliate”** means, with respect to any Person, (i) another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified (and if that Person is an individual, including any member of the Family Group, (ii) any director, officer, managing member, partner, trustee, or beneficiary of that Person, (iii) any other Person directly or indirectly holding ten percent (10%) or more of any class of the Equity Interests of that Person, and (iv) any other Person ten percent (10%) or more of any class of whose Equity Interests is held directly or indirectly by that Person.

**“Agent”** means Salus Capital Partners, LLC, in its capacity as Administrative Agent and Collateral Agent under any of the Loan Documents, or any successor thereto in such capacities.

**“Agent Parties”** shall have the meaning specified in Section 10.02(d).

**“Agent’s Office”** means the Agent’s address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Borrower and the Lenders.

**“Aggregate Revolving Commitments”** means the Revolving Commitments of all the Revolving Lenders. As of the Closing Date, the Aggregate Revolving Commitments are the USD\$ of the Equivalent Amount of C\$8,000,000.

**“Agreement”** means this Super Priority DIP Credit Agreement as the same may be amended, restated, supplemented, replaced, extended or modified from time to time.

“**Allocable Amount**” has the meaning specified in Section 10.22(a).

“**AML Program**” has the meaning specified in Section 5.29.

“**Applicable Lenders**” means the Required Lenders, the Required Revolving Lenders, all affected Lenders, or all Lenders, as the context may require.

“**Applicable Percentage**” means, in each case as the context requires, (a) with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time, or (b) with respect to all Lenders at any time, the percentage of the sum of the Aggregate Revolving Commitments represented by the sum of such Lender’s Revolving Commitment and the outstanding principal balance of such Lender’s at such time, in each case as the context provides. If the commitment of each Lender to make Loans have been terminated pursuant to Section 2.06 or Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender shall be determined based on the Applicable Percentage of such Revolving Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“**Appraised Value**” means, with respect to Eligible Inventory, the appraised orderly liquidation value, net of costs and expenses to be incurred in connection with any such liquidation, which value is expressed as a percentage of Cost of Eligible Inventory as set forth in the inventory stock ledger of the Borrower, which value shall be determined from time to time by an appraisal undertaken by an independent appraiser engaged by the Agent.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender or (d) the same investment advisor or an advisor under common control with such Lender, Affiliate or advisor, as applicable.

“**Approved Vendor**” means a Vendor which (a) is located in any country acceptable to the Agent in its Permitted Discretion, (b) has received, or arrangements satisfactory to the Agent and Monitor have been made for, the timely payment or performance of all obligations owed to it by the Loan Parties, and (c) has not asserted any reclamation, repossession, diversion, stoppage in transit, revendication, Lien or title retention or unpaid suppliers’ rights in respect of such Inventory.

“**Arranger**” means Salus Capital Partners, LLC, in its capacity as sole lead arranger and sole book manager.

“**Assignee Group**” means two or more assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

**“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 10.06(b)), and accepted by the Agent, in substantially the form of **Exhibit E** or any other form approved by the Agent.

**“Attributable Indebtedness”** means, on any date, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

**“Audited Financial Statements”** means the audited Combined balance sheet of the Financial Statement Parties for the Fiscal Year ended March, 2015, and the related combined statements of income or operations, Shareholders’ Equity and cash flows for such Fiscal Year of the Financial Statement Parties, including the notes thereto.

**“Availability”** means, as of any date of determination thereof by the Agent, the result, if a positive number, of:

- (a) the lesser of:
  - (i) BM Borrowing Base, less the amount advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extension of credit stated to be required under and as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount; and
  - (ii) the Maximum Revolving Loan Amount; minus
- (b) the Total Revolver Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower shall certify to the Agent and it shall be a condition to any advance hereunder that there is no “Availability” under and as defined in the J.S.N. Credit Agreement, the “Permitted Overadvance” under the J.S.N. Credit Agreement is being permanently reduced in accordance with the Budget pursuant to Section 6.13 hereof, and the Borrower shall certify to the Agent that all accounts payable (including, without limitation, all Post-Petition rents and all amounts which are the subject matter of the Administrative Charge and the Directors’ Charge) and Post-Petition Taxes and Priority Payables are not in arrears and are being paid on a timely basis in accordance with the Budget (other than amounts disputed in good faith by appropriate proceedings and for which appropriate Reserves have been established).



**“Availability Period”** means the period from and including the Closing Date to the Termination Date.

**“Availability Reserves”** means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent’s ability to realize upon the Collateral and receive repayment in full therefrom, including any and all costs, fees and expenses, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent’s Permitted Discretion, (but are not limited to) Rent Reserves and reserves based on: (i) customs duties, and other costs to release Inventory which is being imported into Canada; (ii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, goods and services, harmonized sales, municipal, and other Taxes which may have priority over the interests of the Agent in the Collateral; (iii) salaries, wages and benefits due to employees of any Borrower and any employee service deductions, workers’ compensation, pension fund or *Wage Earner Protection Act* (Canada) obligations; (iv) Customer Credit Liabilities; (v) Customer Deposits; (vi) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (vii) warehousemen’s or bailee’s charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral; (viii) amounts due to vendors on account of consigned goods; (ix) Cash Management Reserves; (x) royalties payable in respect of licensed merchandise; (xi) claims of any pension regulator or any pension claimant in respect of pension entitlements which, upon a realization upon the Collateral, may represent a Claim on the Collateral or its proceeds which ranks prior to the Liens arising under the Loan Documents; and (xii) Inventory that is subject to the rights of suppliers under Section 81.1 of the *Bankruptcy and Insolvency Act* (Canada).

**“Average Daily Availability”** means, for any period of determination, an amount equal to the sum of Availability for each day of such period divided by the actual number of days in such period, as determined by the Agent, which determination shall be conclusive absent manifest error.

**“Bank Products”** means any services or facilities provided to any Loan Party by the Agent or any of its Affiliates (but excluding Cash Management Services) including, without limitation, on account of (a) Swap Contracts, (b) merchant services constituting a line of credit, and (c) supply chain finance services including, without limitation, trade payable services and supplier accounts receivable purchases.

**“Benefit Plan”** means any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability or life insurance, under which any

Loan Party has any liability with respect to any employee or former employee, but excluding any Pension Plan.

“**Blocked Account**” has the meaning provided in Section 6.13(a)(ii).

“**Blocked Account Agreement**” means with respect to an account established by a Loan Party, an agreement, in form and substance satisfactory to the Agent, subjecting such account to Liens in favour of the Agent and whereby the bank maintaining such account agrees to comply only with the instructions originated by the Agent without the further consent of any Loan Party.

“**Blocked Account Bank**” means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDA’s are deposited and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

“**BM Borrowing Base**” has the meaning provided in the definition of “*Borrowing Base*” below.

“**BM Budget**” has the meaning provided in the definition of “*Budget*” below.

“**Borrower Materials**” means any Borrowing Base Certificate, information and reports including, in respect of the RISP and the Forbearance Agreement, the Variance Report, an estimate of potential liabilities in respect of any Court Charges, financial statements and other materials delivered by the Borrower hereunder, as well as other Reports and information provided by the Agent to the Lenders.

“**Borrower**” has the meaning specified in the introductory paragraph hereto and includes its successors and assigns.

“**Borrowing**” means a Revolving Credit Borrowing.

“**Borrowing Base**” means, at any time of calculation, the Borrowing Base of the J.S.N. Borrowers under the J.S.N. Credit Agreement (but for greater certainty, such Borrowing Base thereunder and hereunder, shall only include in respect of the Borrower an amount equal to (without duplication)) (the “**BM Borrowing Base**”):

- (a) with respect to finished goods jewellery inventory which is Eligible Inventory, 95% of the Appraised Value of such Eligible Inventory; minus
- (b) the amount of all Availability Reserves at such time.

“**Borrowing Base Certificate**” means a certificate substantially in the form of **Exhibit F** hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time) in respect of the Borrower on an individual basis and the Combined Borrowing Base under the J.S.N. Credit Agreement in respect of the J.S.N. Borrowers as approved by the Monitor and executed and certified as accurate and complete by a

Responsible Officer of the Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

**“Budget”** means the thirteen (13) week cash flow of the Borrower filed with the Court in connection with the Initial Order, and any subsequent thirteen week cash flow projections furnished pursuant to the CCAA Proceedings (the **“BM Budget”**), and the Combined 13 week cashflows of the J.S.N. Borrowers, together with any and all backup and detail tabs in relation to the Budget summary in the same form as previously provided to the Agent and in each case, in substance satisfactory to the Monitor and the Agent, reflecting on a line item basis, among other things, sales, cash receipts and disbursements, inventory and receivable levels, inventory receipt/purchase levels, categorical expenditures, the BM Borrowing Base, the Combined Borrowing Base of the J.S.N. Borrowers under the J.S.N. Credit Agreement Availability hereunder, *“Availability”* and the outstanding amount of the *“Permitted Overadvance”* (each under and as defined in the J.S.N. Credit Agreement) for the subject period (both hereunder and under the J.S.N. Credit Agreement), which may be amended and modified solely with the recommendation of the Monitor and the written consent of the Agent.

**“Business”** means the business carried on by the Borrower on the Closing Date, being the business of the retail sale of jewellery and related products.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the City of Toronto, Ontario or Boston, Massachusetts.

**“Canadian Dollars”, “Dollars”, “C\$” or “\$”** shall mean the lawful currency of Canada.

**“Capital Expenditures”** means, with respect to any Person for any period, (a) all expenditures made (whether made in the form of cash or other property) or costs incurred for the acquisition or improvement of fixed or capital assets of such Person (excluding normal replacements and maintenance which are properly charged to current operations), and net of any tenant allowances in each case that are (or should be) set forth as capital expenditures in a combined cash flow supplement of such Person for such period, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations incurred by a Person during such period.

**“Capital Lease Obligations”** means, with respect to any Person for any period, 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 liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Cash Collateral Account”** means any deposit account, whether interest bearing or non-interest bearing, established by one or more of the Loan Parties in the name of the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance herewith.

“**Cash Management Bank**” means a bank or other financial institution as approved by Agent in its sole discretion.

“**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 Loan Parties with respect to Cash Management Services then provided or outstanding.

“**Cash Management Services**” means any cash management services or facilities provided to any Loan Party by the Cash Management Bank or any of its Affiliates, including, without limitation: (a) ACH transactions, (b) controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) credit or debit cards, (d) credit card processing services, and (e) purchase cards.

“**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).

“**CCAA Proceedings**” has the meaning assigned in the preamble to this Agreement.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, however, for the purposes of this Agreement: (x) the *Dodd-Frank Wall Street Reform and Consumer Protection Act* and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or any central bank or other Governmental Authority, in each case pursuant to Basel III, shall in each case be deemed to be a “*Change in Law*”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means an event or series of events by which:

- (a) the Family Group shall cease to own and control legally and beneficially (free and clear of all Liens), either directly or indirectly (including through Whitpay Inc.), equity securities in J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc. representing more than seventy-five percent (75%) of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of such Persons on a fully-diluted basis (and taking into account all such securities that the Family Group has the right to acquire pursuant to any option right (as defined in clause (b) below));
- (b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of

J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc. cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any Person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

- (c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of J.S.N., Always & Forever Family Collection Incorporated, Global Diamonds (G.D.) Ltd., Utopia Jewellery Co., Utopia Diamond Inc., GMJ Corp. and Forever Jewellery Inc., or control over the Equity Interests of such Persons entitled to vote for members of the board of directors or equivalent governing body of such Persons on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing twenty-five percent (25%) or more of the combined voting power of such securities; or
- (d) any “*change in control*” or “*sale*” or “*disposition*” or similar event as defined in any Organizational Document of any Loan Party or in any Material Contract, or any document governing Material Indebtedness of any Loan Party, shall occur;
- (e) the J.S.N. fails at any time to own, directly or indirectly, one-hundred percent (100%) of the Equity Interests of each other Loan Party (other than Always & Forever Family Collection Incorporated and GMJ Corp. and Forever Jewellery Inc.) free and clear of all Liens (other than the Liens in favour of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents; or
- (f) a Responsible Officer as of the Closing Date shall for any reason either cease to hold such office or be actively engaged in the day-to-day

management of the Borrower, unless (i) a successor with similar industry experience, reputation and expertise is appointed within six (6) months of such cessation and such successor is appointed following good faith consultation with the Agent or (ii) if such successor does not have (or Agent shall reasonably determine such successor does not have) similar industry experience, reputation or expertise, such successor is appointed with the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) within six (6) months of such cessation.

**“Closing Date”** means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

**“Collateral”** means any and all *“Collateral”* as defined in any applicable Security Document, Loan Document or Pre-Petition Loan Document or the Initial Order, including any cash proceeds of any sales of Inventory or other assets of the Borrower wherever located, deposited or held, and all other property that is or is intended under the terms of the Security Documents or the Initial Order to be subject to Liens in favour of the Agent.

**“Collateral Access Agreement”** means an agreement reasonably satisfactory in form and substance to the Agent executed by (a) a bailee or other Person in possession of Collateral, and (b) any landlord of Real Estate leased by any Loan Party and any financier or Person holding a Lien in respect of such Real Estate, pursuant to which such Person (i) acknowledges the Agent’s Lien on the Collateral, (ii) releases or subordinates such Person’s Liens in the Collateral held by such Person or located on such Real Estate, (iii) provides the Agent with access to the Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Agent with a reasonable time to sell and dispose of the Collateral from such Real Estate, and (v) makes such other agreements with the Agent as the Agent may reasonably require.

**“Combined”** means, when used to modify a financial term, test, statement or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the combination, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

**“Commitment”** means, as to each Lender, such Lender’s Revolving Commitment.

**“Committed Loan Notice”** means a notice of a Revolving Credit Borrowing, pursuant to Section 2.02, which shall be substantially in the form of **Exhibit A**.

**“Committed Revolving Loan”** has the meaning specified in Section 2.01.

**“Compliance Certificate”** means a certificate substantially in the form of **Exhibit D**.

**“Concentration Account”** has the meaning provided in Section 6.13(c).

**“Consent”** means actual consent given by a Lender from whom such consent is sought; or the passage of 1 Business Day from receipt of written notice to a Lender from the

Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender's objection to such course of action.

**"Consultant Costs"** means the costs and expenses associated with the appointment of any consultant contemplated herein or in the Forbearance Agreement, together with any other third party costs associated with business evaluations or inventory management conducted on behalf of any of the Loan Parties to determine the Borrowing Base and assist it with valuing and liquidating and transporting Inventory, negotiation of real property lease concessions and store closures from time to time.

**"Contractual Obligation"** means, as to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

**"Cost"** means the lower of cost or market value (determined as the cost equivalent of the lowest ticketed or promotional price at which such Inventory is offered to the public after all mark-downs (whether or not such price is reflected on such Person's accounting records)) of Inventory, based upon the J.S.N. Borrower's accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the J.S.N. Borrowers, the J.S.N. Borrowers' purchase journals or the J.S.N. Borrowers' stock ledger. *"Cost"* does not include inventory capitalization costs or other non-purchase price charges (such as freight) used in the J.S.N. Borrowers' calculation of cost of goods sold.

**"Court"** has the meaning assigned in the preamble to this Agreement.

**"Court Charges"** collectively means the charges established under the Initial Order including the DIP Charge (as defined herein), the Administration Charge and Directors' Charge (each as defined and/or contemplated in the Initial Order).

**"Credit Card Issuer"** shall mean any Person (other than Borrower or other Loan Party) who issues or whose members issue credit or debit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa Canada Inc. Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc. and other issuers approved by the Agent in its Permitted Discretion.

**"Credit Card Processor"** shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's

sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

“**Credit Card Notifications**” has the meaning provided in Section 6.13(a)(i).

“**Credit Party**” or “**Credit Parties**” means (a) individually, (i) each Lender and its Affiliates, (ii) the Agent, (iii) the Arranger, (iv) each beneficiary of each indemnification obligation undertaken by any Loan Party under any Loan Document, (v) any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and (vi) the successors and assigns of each of the foregoing, and (b) collectively, all of the foregoing.

“**Credit Party Expenses**” means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) any syndication or participation of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement or the Loan Documents or efforts to monitor, preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring, refinancing, sale, investment, or negotiations in respect of same or any Obligations; (b) all customary fees and charges (as adjusted from time to time) of the Agent with respect to access to online Loan information, the disbursement of funds (or the receipt of funds) to or for the account of Loan Parties (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith; and (c) all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent or an Affiliate of the Agent.

“**CRO**” has the meaning provided in the definition of “*Initial Order*” below.

“**Customer Credit Liabilities**” means at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrower entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (b) outstanding merchandise credits of the Borrower, and (c) liabilities in connection with frequent shopping programs of the Borrower.

“**Customer Deposits**” means at any time, the aggregate amount at such time of (a) deposits made by customers with respect to the purchase of goods or the performance of services and (b) layaway obligations of the Borrower.



**“Customs Broker/Carrier Agreement”** means an agreement in form and substance satisfactory to the Agent among any J.S.N. Borrower, a customs broker, freight forwarder, consolidator or carrier, and the Agent, in which the customs broker, freight forwarder, consolidator or carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Agent and agrees, upon notice from the Agent, to hold and dispose of the subject Inventory solely as directed by the Agent.

**“DDA”** means each chequing, savings or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

**“DDA Notification”** has the meaning provided therefor in Section 6.13(a)(iii).

**“Debtor Relief Laws”** means the *Companies Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), each applicable governing corporate statute providing for arrangements and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of Canada (or any provincial or territorial subdivision thereof) or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

**“Default”** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

**“Default Rate”** means the applicable rate of interest plus three percent (3%) per annum.

**“Defaulting Lender”** means any Revolving Lender or Participant that (a) has failed to fund any portion of the Committed Revolving Loans required to be funded by it hereunder or any amount under the J.S.N. Credit Agreement within one (1) Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to the Agent or any other Revolving Lender any other amount required to be paid by it hereunder or under the J.S.N. Credit Agreement within one (1) Business Day of the date when due, (c) has failed or refused to abide by any of its obligations under this Agreement or under the J.S.N. Credit Agreement, or (d) has been deemed insolvent or become the subject of a bankruptcy, receivership or insolvency proceeding.

**“Deteriorating Lender”** means any Defaulting Lender or any Revolving Lender as to which (a) the Agent has a good faith belief that such Revolving Lender has defaulted in fulfilling its obligations under one or more other participations or syndicated credit facilities, or (b) a Person that Controls such Revolving Lender has been deemed insolvent or become the subject of a bankruptcy, receivership, insolvency or similar proceeding.

**“DIP Charge”** means the super priority debtor in possession charge to secure the DIP Obligations and which for greater certainty, shall not secure any Pre-Petition Liabilities.

“**DIP Obligations**” means the Revolving Commitments hereunder.

“**Disposition**” or “**Dispose**” means the sale, transfer, license, lease, return of any Collateral to any vendor to offset an account payable or other disposition (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and any sale, transfer, license or other disposition) of any property (including, without limitation, any Equity Interests) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Eligible Inventory**” means, as of the date of determination of the Borrowing Base or the BM Borrowing Base, without duplication, items of jewellery Inventory of Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrower’s business and deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base or the BM Borrowing Base, in each case that, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrower herein, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, the following items of Inventory shall not be included in Eligible Inventory:

- (a) Inventory that is not solely owned by Borrower or Borrower does not have good and valid title thereto;
- (b) Inventory that is leased by or is on consignment to Borrower or which is consigned by Borrower to a Person which is not a Loan Party;
- (c) Inventory that is not located at a location that is owned or leased by Borrower, except (i) Inventory in transit between such owned or leased locations or locations which meet the criteria set forth in clause (ii) below, or (ii) to the extent that the Borrower have furnished the Agent with (A) any PPSA or UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Agent;
- (d) Inventory that is located in a distribution center leased by Borrower unless the applicable lessor and any financier or Person holding a Lien in respect of such location (if applicable) has delivered to the Agent a Collateral Access Agreement, or the Agent has implemented Reserves for such location;
- (e) Inventory that is comprised of goods which are (i) damaged, defective, “seconds,” or otherwise unmerchantable, (ii) to be returned to the vendor, (iii) customer items, work in process, raw materials, or that constitute

samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) seasonal in nature and which have been packed away for sale in the subsequent season, (v) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, (vi) bill and hold goods, or (vii) otherwise not salable above cost;

- (f) Inventory that is not subject to a perfected first priority security interest (subject to the Court Charges) in favour of the Agent;
- (g) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;
- (h) Inventory that has been sold but not yet delivered or as to which Borrower has accepted a deposit;
- (i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement or distribution with any third party, which restricts the sale of such Inventory unless Agent is in receipt of a consent satisfactory to it or Agent has implemented Reserves, from which Borrower has received notice of a dispute in respect of any such agreement; or
- (j) Inventory which the Agent determines in its Permitted Discretion to be unacceptable for borrowing.

**“Environmental Laws”** means any and all Federal, provincial, territorial, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of human health, safety, the workplace, the environment or natural resources or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**“Environmental Liability”** means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence 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.

**“Equipment”** has the meaning set forth in the PPSA.

**“Equity Interests”** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

**“Equivalent Amount”** means, on any date of determination, with respect to obligations or valuations denominated in one currency (the **“first currency”**), the amount of another currency (the **“second currency”**) which would result from the Agent converting the first currency into the second currency at approximately 12:00 noon on such day in accordance with Agent’s customary practice for commercial loans being administered by it or at such other rate as may have been agreed in writing between Borrower and Agent.

**“Event of Default”** has the meaning specified in Section 8.01. An Event of Default shall be deemed to be continuing unless and until that Event of Default has been duly waived as provided in Section 10.01 hereof.

**“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 Loan Parties 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 or in which its principal office is located.

**“Extraordinary Receipt”** means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including (i) payments received by any Loan Party pursuant to any acquisition documents relating to the Borrower, including any deferred payment, any purchase price adjustments that result in a payment by any seller to any Loan Party, and any indemnity payments made by any Seller), and (ii) tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), expropriation and condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments related to any such acquisition.

**“Facility Guarantee”** means any Guarantee made by a Guarantor in favour of the Agent and the other Loan Parties, in form and substance reasonably satisfactory to the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

**“Family Group”** means (i) Mr. Joseph Shilon and his spouse, parents, siblings, children, grandchildren, nephews, nieces, heirs, legatees, lineal descendants, executors,

administrators, and other representatives, and (ii) any trust, family partnership or similar investment entity of which any of the foregoing Persons are trustee(s), managing member(s), managing partner(s) or similar officer(s) and/or that is for the benefit of any of the foregoing Persons as long as one or more of such Persons has the exclusive or joint right to control the voting and disposition of securities held by such trust, family partnership or similar investment entity.

**"Federal Funds Rate"** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of  $\frac{1}{100}$  of 1%) charged to money center banks on such day on such transactions as determined by the Agent.

**"Financial Statement Parties"** means the Borrower and each of the corporate Guarantors hereunder (other than Forever Jewellery Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc).

**"Fiscal Month"** means any fiscal month of any Fiscal Year, which month shall generally end on the last day of each calendar month in accordance with the fiscal accounting calendar of the Borrower.

**"Fiscal Year"** means any period of twelve (12) consecutive months ending on March 31 of any calendar year.

**"Forbearance Agreement"** means the accommodation agreement amongst, *inter alia*, the Agent, the Borrower and the other Loan Parties dated with effect as of the date hereof.

**"Fund"** means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

**"GAAP"** means in relation to any Person at any time, (a) until such time as such Person adopts the International Financial Reporting Standards, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants or its successor, applied on a basis consistent with the most recent audited financial statements of such Person (except for changes approved by the auditors of such Person), and (b) after such time as such Person adopts the International Financial Reporting Standards, such International Financial Reporting Standards.

**"Governmental Authority"** means any nation or government, or of any political subdivision thereof, whether provincial, territorial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising

executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Guarantee”** or **“Guaranty”** means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term *“Guarantee”* as a verb has a corresponding meaning.

**“Guarantor”** has the meaning specified in the introductory paragraph hereto and any other Person that shall be required to execute and deliver a Facility Guarantee pursuant to Section 6.12 or is or will become a guarantor hereunder pursuant to Section 10.16 hereof.

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“Indebtedness”** means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments and obligations, including the similar obligations in respect of the Court Charges;

- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business) and, in each case, not past due for more than sixty (60) days after the due date (unless such amounts are being contested in good faith by appropriate proceedings and the applicable Person has set aside on its books adequate reserves with respect thereto in accordance with GAAP);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

**"Indemnitees"** has the meaning specified in Section 10.04(b).

**"Information"** has the meaning specified in Section 10.07.

**"Initial Order"** means an order issued and entered by the Court and any amendments or supplements thereto and additional orders in the CCAA Proceedings not prohibited

hereunder including as is in accordance with Section 7.17, in form and substance acceptable to the Monitor and the Agent, which shall stay all proceedings against the Borrower (other than the Agent) and which shall, inter alia, approve the Borrower entering into and performing its obligations under this Agreement and the other Loan Documents, provide for the appointment of a Chief Restructuring Officer acceptable to the Agent (“CRO”) with powers of such CRO and the Monitor acceptable to the Agent, provide for security/protective measures required by the Agent, provide for the continuation of the cash management and cash collateral arrangements with any applicable Blocked Account Bank contemplated herein and under the J.S.N. Credit Agreement, approving the RISP, and providing for the Court Charges in amounts acceptable to the Agent. The term “*Initial Order*” shall, for greater certainty, include such additional Orders in the CCAA Proceedings as are acceptable to the Borrower and the Agent.

“**Intellectual Property**” means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“**Interest Payment Date**” means the first day after the end of each month and the Maturity Date.

“**Internal Control Event**” means a material weakness in, or fraud that involves management or other employees who have a significant role in, the Borrower’s and/or its Subsidiaries’ internal controls over financial reporting.

“**Inventory**” has the meaning given that term in the PPSA, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

“**Inventory Reserves**” means such reserves as may be established from time to time by the Agent in its Permitted Discretion with respect to the determination of the saleability,



at retail, of the Eligible Inventory, which reflect such other factors as affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Inventory. Without limiting the generality of the foregoing, Inventory Reserves may, in the Agent's Permitted Discretion, include (but are not limited to) reserves based on:

- (a) obsolescence;
- (b) seasonality;
- (c) Shrink;
- (d) imbalance;
- (e) change in Inventory character;
- (f) change in Inventory composition;
- (g) change in Inventory mix;
- (h) markdowns (both permanent and point of sale);
- (i) retail mark-ons and mark-ups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events;
- (j) out-of-date and/or expired Inventory; and
- (k) reductions in precious metal commodity costs.

**"Investment"** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) any Acquisition, or (d) any other investment of money or capital in order to obtain a profitable return. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

**"Investment Policy"** means the complete and accurate list of all Investments held by the Borrower on the Closing Date showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof, as set forth on Schedule 7.02(a).

**"ITA"** means the *Income Tax Act* (Canada) and the regulations promulgated thereunder.

**"Joinder"** means an agreement, in form and substance reasonably satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by

the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

“**J.S.N.**” or “**JSN**” means J.S.N. Jewellery Inc. and its successors and assigns.

“**J.S.N. Borrowers**” or “**JSN Borrowers**” means the “*Borrowers*” under and as defined in the J.S.N. Credit Agreement and their respective successors and assigns.

“**J.S.N. Credit Agreement**” or “**JSN Credit Agreement**” means that certain Credit Agreement dated as of July 18, 2013 entered into among the J.S.N. Borrowers, certain of the Guarantors, the Agents and the Lenders (as each of those terms is defined therein), together with all instruments, documents and agreements executed or delivered in connection therewith, as amended, including by the Forbearance Agreement, restated, supplemented and extended.

“**Junior Debt**” means 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 or which is secured by Liens which have been postponed to the Liens granted to secure the Obligations on terms approved by the Agent.

“**Laws**” means each international, foreign, Federal, provincial, territorial, state and local law, statute, treaty, rule, guideline, regulation, ordinance, code and administrative or judicial precedent or authority, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and each applicable administrative order, directed duty, request, license, authorization and permit of, and agreement with, any Governmental Authority, in each case whether or not having the force of law.

“**Lease**” means any agreement, whether written or oral, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“**Lender**” means, individually, a Revolving Lender, and collectively, all such Persons.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Agent.

“**Lien**” means (a) any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien/right/claim/deemed trust (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale, Capital Lease Obligation, Synthetic Lease Obligation, or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing) and (b) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

**“Liquidation”** means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable Law as a creditor of Borrower (subject to the Initial Order) with respect to the realization on the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Borrower pursuant to the Restructuring Plan and the Forbearance Agreement acting with the approval of the Monitor and the Agent, of any public, private or “*going out of business*”, “*store closing*”, or other similarly themed sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word “**Liquidation**” (such as “*Liquidate*”) are used with like meaning in this Agreement.

**“Loan”** means any extension of credit by a Lender to the Borrower under Article 2 in the form of a Committed Revolving Loan or otherwise.

**“Loan Account”** has the meaning assigned to such term in Section 2.11(a).

**“Loan Documents”** means this Agreement, each Note, the Pricing Letter, all Borrowing Base Certificates, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, the Security Documents, each Facility Guarantee, the Shilon Guarantee, each Blocked Account Agreement, each Security Agreement, and any other instrument, acknowledgement, confirmation, indemnity, guarantee or agreement now or hereafter executed and delivered in connection herewith, or in connection with any transaction arising out of any Cash Management Services and Bank Products provided by the Agent or any of its Affiliates, each as amended and in effect from time to time.

**“Loan Parties”** means, collectively, the Borrower, each Guarantor including the Personal Guarantor and each of their respective heirs, executors, administrators, other legal representatives, successors and assigns.

**“Material Adverse Effect”** means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party; (b) a material impairment of the ability of any of them to perform its obligations under any Loan Document, the J.S.N. Credit Agreement or the Forbearance Agreement to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or any Lender under the Loan Documents, the J.S.N. Credit Agreement or the Forbearance Agreement, or (d) the validity, perfection or priority (subject to the Court Charges and the ability of the agent to implement Reserves) of any of the Liens or DIP Charge in favor of the Agent for the benefit of the Credit Parties on any of the Collateral; or (e) any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any such Person of any Loan Document, the J.S.N. Credit Agreement or the Forbearance Agreement to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other than existing events would result in a Material Adverse Effect. However, a Material Adverse Effect shall not be deemed to exist merely as a result of the insolvency or near insolvency condition of the Borrower, the issuance of the Initial Order or the CCAA Proceedings.

**“Material Contract”** means with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of C\$500,000 or more in any Fiscal Year or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

**“Material Indebtedness”** means Indebtedness (other than the Obligations) of the Loan Parties in an aggregate principal amount exceeding C\$500,000. For purposes of determining the amount of Material Indebtedness at any time, (a) the amount of the obligations in respect of any Swap Contract at such time shall be calculated at the Swap Termination Value thereof, (b) undrawn committed or available amounts shall be included, and (c) all amounts owing to all creditors under any combined or syndicated credit arrangement shall be included.

**“Maturity Date”** means July 29, 2016.

**“Maximum Revolving Loan Amount”** means, at any time of determination, the lesser of:

- (a) the Aggregate Revolving Commitments; and
- (b) the BM Borrowing Base, less the amount advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extensions of credit stated to be required under and set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount.

**“Measurement Period”** means, at any date of determination, the most recently completed twelve (12) Fiscal Months.

**“Monitor”** means Alvarez & Marsal Canada Inc., the Court appointed monitor in the CCAA Proceedings or such other Person approved by the Court and acceptable to Agent.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor thereto.

**“Net Proceeds”** means:

- (c) with respect to any Prepayment Event by Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the DIP Charge or the Agent’s Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents) and

- (B) the reasonable and customary out-of-pocket expenses incurred by Borrower or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by Borrower to third parties (other than Affiliates)); and
- (d) with respect to the sale or issuance of any Equity Interest by Borrower or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by Borrower or such Subsidiary in connection therewith.

“**Note**” means a Revolving Note as may be amended, restated, supplemented or modified from time to time.

“**Obligations**” means (a) all advances to, and debts (including principal, interest, fees, costs, and expenses), liabilities, obligations, covenants, indemnities, and duties of, any Loan Party arising under any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees, costs, expenses and indemnities that accrue after the commencement by or against any Loan Party, or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees, costs, expenses and indemnities are allowed claims in such proceeding, and (b) any Other Liabilities.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation, amalgamation or continuation, as applicable (or equivalent thereof) and the bylaws (or equivalent thereof); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, and (d) in each case, all shareholder or other equity holder agreements, voting trusts and similar arrangements to which such Person is a party or which is applicable to its Equity Interests and all other arrangements relating to the Control or management of such Person.

“**Other Liabilities**” means (a) any obligation on account of (i) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries and/or (ii) any transaction with the Agent or any of its Affiliates that arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

**“Other Taxes”** means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

**“Outstanding Amount”** means with respect to Committed Revolving Loans on any date, the aggregate outstanding principal amount thereof (and any and all due but unpaid interest thereon or any costs, fees or expenses then owing and payable) after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans occurring on such date.

**“Overadvance”** means a Borrowing to the extent that, immediately after its having been made, Availability hereunder is less than zero.

**“Participant”** has the meaning specified in Section 10.06(d).

**“Participation Register”** has the meaning provided therefor in Section 10.06(d).

**“Patriot Act”** shall have the meaning provided in Section 10.17.

**“Payment Date”** means the last Business Day of each fiscal month and the Termination Date.

**“PCMLTFA”** has the meaning given in Section 5.29.

**“Pension Plan”** means each pension plan required to be registered under applicable law that is maintained or contributed to by a Loan Party for its employees or former employees, but does not include the Canada Pension Plan as maintained by the Government of Canada.

**“Perfection Certificate”** means that certain perfection certificate executed and delivered by the Loan Parties in favour of the Agent, for the benefit of the Credit Parties in connection with the J.S.N. Credit Agreement, and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Agent) executed and delivered by any Loan Party in favour of the Agent for the benefit of the Credit Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance herewith.

**“Permitted Discretion”** means a determination made in good faith and in the exercise of reasonable credit discretion from the perspective of a secured asset based debtor in possession lender.

**“Permitted Disposition”** means any of the following:

- (a) Dispositions of Inventory in the ordinary course of business;

- (b) Dispositions of other property or assets for cash in an aggregate amount not less than the fair market value of such property or assets pursuant to the Restructuring Plan and the Initial Order;
- (c) **[Reserved]**
- (d) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;
- (e) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of Borrower and the Monitor, no longer useful or necessary in its business or that of any Subsidiary all as contemplated in the Restructuring Plan and permitted by the Initial Order; and
- (f) sales, transfers and Dispositions among the Loan Parties or by any Subsidiary to a Loan Party.

**"Permitted Encumbrances" means:**

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;
- (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, employment insurance and other social security laws or regulations;
- (d) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (e) Liens in respect of judgments that would not constitute an Event of Default hereunder;
- (f) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary

conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

- (g) Liens existing on the Closing Date and listed on Schedule 7.01;
- (h) **[Reserved]**
- (i) Liens in favour of the Agent;
- (j) statutory Liens of landlords and lessors in respect of rent not in default;
- (k) possessory Liens in favour of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;
- (l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favour of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;
- (m) Liens arising from precautionary PPSA filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party;
- (n) Liens in favour of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations that are (A) not yet due and payable or are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and Agent has implemented Reserves, and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation and such goods are released and being delivered to the applicable Loan Party; and
- (o) The Court Charges set out in the Initial Order.

**"Permitted Indebtedness"** means each of the following as long as no Default or Event of Default exists or would arise from the incurrence thereof:

- (a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03;
- (b) Indebtedness of any Loan Party to any other Loan Party;



- (c) the Obligations (including the Pre-Petition Liabilities); and
- (d) Indebtedness for trade payables owing prior to the CCAA Proceedings and Post-Petition expenses incurred in accordance with the Budget and the Restructuring Plan;
- (e) **[Reserved]**
- (f) obligations in respect of the Court Charges set out in the Initial Order.

“**Permitted Investments**” means each of the following as long as same is approved by the Monitor and no Default or Event of Default exists or would arise from the making of such Investment:

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the federal government of Canada or the United States or any agency or instrumentality thereof having maturities of not more than 30 days from the date of acquisition thereof; provided that the full faith and credit of the federal government of Canada or the United States (as applicable) is pledged in support thereof;
- (b) **[Reserved]**
- (c) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of Canada, the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of Canada, the United States, any state thereof or the District of Columbia, and is a Schedule I bank under the *Bank Act* (Canada) or a member of the Federal Reserve System of the United States, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least C\$1,000,000,000, in each case with maturities of not more than 30 days from the date of acquisition thereof;
- (d) **[Reserved]**
- (e) Investments, classified in accordance with GAAP as current assets of the Borrower on a short term basis with no brokerage costs or fees, in any money market fund or mutual fund that has the highest rating obtainable from either Moody’s or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;
- (f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

- (g) [Reserved]
- (h) [Reserved]
- (i) Guarantees constituting Permitted Indebtedness;
- (j) [Reserved]
- (k) [Reserved]

provided, however, that notwithstanding the foregoing, no such Investments specified above shall be permitted unless such Investments shall be pledged and hypothecated to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

**“Permitted Overadvance”** means an Overadvance made by the Agent, in its Permitted Discretion, which is made:

- (a) to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties;
- (b) to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation; or
- (c) to pay any other amount chargeable to any Loan Party hereunder;

provided however, that the foregoing shall not result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that the Agent may only make an Overadvance in its sole, absolute and unfettered discretion.

**“Permitted Sales”** means a transaction or transactions for the sale of certain of the Borrower’s Inventory through the permanent closing of certain of the Borrower’s stores and the sale of excess Inventory through such locations in accordance with the Restructuring Plan and Budget as approved by the Court pursuant to the applicable provisions of the Initial Order, any subsequent Court order under the CCAA, with the assistance of and as recommended by one or more independent, nationally recognized, professional retail consultants, acceptable to the Monitor and the Agent, which transaction or transactions shall be on terms satisfactory to the Monitor and the Agent and be in accordance with the Restructuring Plan, the Forbearance Agreement and the Initial Order.

**“Person”** means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

**“Personal Guarantor”** means Mr. Joseph Shilon of 33 Thornbank Road, Thornhill, Ontario, L4J 2A1, Canada.

**“Plan”** means any “*employee benefit plan*” (as such term is defined in Section 3(3) of ERISA) established by the Borrower.

**“Plan of Compromise”** means a plan of compromise or arrangement filed in the CCAA Proceedings.

**“Post-Petition”** refers to the period after the Closing Date.

**“PPSA”** means the *Personal Property Security Act* (Ontario) and the regulations thereunder, as from time to time in effect, provided, however, if attachment, perfection or priority of Agent’s security interests in any Collateral are governed by the personal property security laws of any jurisdiction other than Ontario, PPSA shall mean those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

**“Prepayment Event”** means:

- (a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of a Loan Party, other than Permitted Dispositions provided the provisions hereof including Section 6.13 are complied with and other than any Disposition of Inventory in the ordinary course of business;
- (b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Loan Party, unless the proceeds therefrom are required to be paid to the holder of a Permitted Encumbrance on such property or asset having priority over the DIP Charge or the Lien of the Agent;
- (c) the issuance by a Loan Party of any Equity Interests;
- (d) the incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or
- (e) the receipt by any Loan Party of any Extraordinary Receipts.

**“Pre-Petition Liabilities”** means all “*Obligations*” as defined in and owing under the J.S.N. Credit Agreement immediately before the granting of the Initial Order, including any “*Permitted Overadvance*” (under and as defined in the J.S.N. Credit Agreement).

**“Pre-Petition Loan Documents”** means the “*Loan Documents*” as defined in the J.S.N. Credit Agreement.

**“Pre-Petition Revolving Loans”** means the *“Committed Revolving Loans”* as defined in the J.S.N. Credit Agreement.

**“Pricing Letter”** means the letter agreement dated as of July 18, 2013, among the J.S.N. Borrowers and the Agent.

**“Priority Payables”** means (a) the full amount of the liabilities of any applicable Person which (i) have a trust imposed to provide for payment including any trust, Lien or claim in favour of any subcontractors, or a security interest, pledge, Lien, hypothec or charge ranking or capable of ranking senior to or pari passu with security interests, Liens, hypothecs or charges securing the Obligations on any Collateral under any federal, provincial, state, county, district, municipal, local or foreign law, or (ii) have a right imposed to provide for payment secured by a Lien ranking or capable of ranking senior to or pari passu with the Obligations under local or national law, regulation or directive, including, but not limited to, claims for unremitted and/or accelerated rents, taxes, wages (including, without limitation, obligations under the *Wage Earner Protection Program Act* (Canada) which are due and payable), withholdings taxes, value added taxes and other amounts payable to an insolvency administrator, employee withholdings or deductions and vacation pay (including, without limitation, obligations under the *Wage Earner Protection Program Act* (Canada) which are due and payable), severance and termination pay, workers’ compensation obligations, government royalties or pension obligations in each case to the extent such trust, or security interest, Lien, hypothec or charge has been or may be imposed, and (b) the amount equal to the aggregate value of the Inventory which the Agent, in good faith, and on a reasonable basis, considers is subject to retention of title by a supplier or a right of a supplier to recover possession thereof, where such supplier’s right has priority over the security interests, Liens, hypothecs or charges securing the Obligations, including, without limitation, Inventory subject to a right of a supplier to repossess goods pursuant to Section 81.1 of the *Bankruptcy and Insolvency Act* (Canada) or any applicable Law granting revendication or similar rights to unpaid suppliers or any similar laws of Canada or any other applicable jurisdiction; which rank senior, and are payable in priority, to the Agent and Lenders in the CCAA Proceedings.

**“Real Estate”** means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

**“Receipts and Collections”** has the meaning specified in Section 6.13(c).

**“Register”** has the meaning specified in Section 10.06(c).

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers and advisors and representatives of such Person and of such Person’s Affiliates.

**“Rent Reserve”** means an amount as the Agent may from time to time determine in its discretion as being appropriate as reserves for the payment of rent at any leased business location of Borrower for which a Collateral Access Agreement has not been obtained.

**“Reports”** has the meaning provided in Section 9.12(b).

**“Request for Borrowing”** means, with respect to a Borrowing of Committed Revolving Loans, a Committed Loan Notice.

**“Required Lenders”** means, as of any date of determination, Lenders holding more than fifty percent (50%) of the sum of the Aggregate Revolving Commitments and the then aggregate outstanding principal balance of the Term Loans or, if the Aggregate Revolving Commitments have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than fifty percent (50%) of the Total Outstandings; provided that the Revolving Commitment of, and the portion in the aggregate of the Total Outstandings held or deemed held by, any Defaulting Lender or Deteriorating Lender shall be excluded for purposes of making a determination of Required Lenders.

**“Required Revolving Lenders”** means, as of any date of determination, Lenders holding more than fifty percent (50%) of the Aggregate Revolving Commitments or, if the commitment of each Revolving Lender to make Committed Revolving Loans have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than fifty percent (50%) of the Total Revolver Outstandings; provided, that the Revolving Commitment of, and the portion of the Total Revolver Outstandings held or deemed held by, any Defaulting Lender or Deteriorating Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

**“Reserves”** means all Inventory Reserves and Availability Reserves.

**“Responsible Officer”** means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of Borrower or any of the other individuals designated in writing to the Agent by an existing Responsible Officer of Borrower as an authorized signatory of any certificate or other document to be delivered hereunder and for whom the Agent has received satisfactory background checks. Any document delivered hereunder that is signed by a Responsible Officer of Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of Borrower.

**“Restricted Payment”** shall mean, with respect to any Person, any payment by such Person (i) of any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of such Person or any of its Subsidiaries, (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, defeasance, cancellation, termination or other acquisition of any of any such capital stock or Equity Interest of such Person or any warrants, options or rights to acquire any such capital stock or Equity Interests of such Person, or the making by such Person of any other distribution

in respect of any such stock or Equity Interests, (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 of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, (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 a shareholder of such Person, (v) in respect of an Investment, 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, other than those made in the ordinary course of business and in accordance with the Budget.

**“Restructuring Plan”** means, with respect to the CCAA Court Proceedings, (i) a detailed restructuring plan prepared by management of the Borrower and approved by the Monitor, which shall include (without limitation) an *“Availability”* model for the Borrower hereunder and for the J.S.N. Borrowers under the J.S.N. Credit Agreement, the Budget, contemplated store closures and consolidations and liquidations thereof and of excess Inventory, reductions in overhead and operational costs, the RISP and such other information (financial or otherwise) as is reasonably requested by the Agent, and (ii) any revisions to such forecast, in each case in form and substance satisfactory to the Agent in its Permitted Discretion.

**“Revolving Commitment”** means, as to each Revolving Lender, its obligation to make Committed Revolving Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which the Revolving Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

**“Revolving Credit Borrowing”** means a borrowing consisting of simultaneous Committed Revolving Loans made by each of the Revolving Lenders pursuant to Section 2.01.

**“Revolving Lender”** means each Lender having a Revolving Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Assumption by which such Person becomes a Revolving Lender.

**“Revolving Note”** means a promissory note made by the Borrower in favour of a Revolving Lender evidencing the Committed Revolving Loans made by such Revolving Lender, substantially in the form of **Exhibit C**.

**“RISP”** means the refinancing, sale and investment solicitation process contemplated in the Initial Order and the Forbearance Agreement and set out in **Schedule 6.20** attached hereto.

**“S&P”** means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“**Salus**” means Salus Capital Partners, LLC and its successors.

“**Salus Entity**” has the meaning provided in Section 10.06.

“**Securities Laws**” means any applicable provincial securities legislation (including regulations, guidelines and “*national policies*”), and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the applicable securities regulators or the Canadian Institute of Chartered Accountants.

“**Security Agreement**” collectively means any and all security agreements executed and delivered by the Loan Parties and any of their applicable Affiliates to and in favour of the Agent, both before and on the Closing Date, as amended, modified, supplemented, renewed, restated or replaced.

“**Security Documents**” means each Security Agreement, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, and each other security agreement or other instrument or document executed and delivered to the Agent by any Loan Party granting a Lien to secure any of the Obligations.

“**Settlement Date**” has the meaning provided in Section 2.14(a).

“**Shilon Guarantee**” or “**Personal Guarantee**” means a guarantee by the Personal Guarantor of the Obligations, with recourse under such guarantee limited to C\$11,000,000.

“**Shrink**” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“**Spot Rate**” has the meaning given to such term in Section 1.06 hereof.

“**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 Loan Party.

“**Subordinated Indebtedness**” means 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.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “*Subsidiary*” or to “*Subsidiaries*” shall refer to a Subsidiary or Subsidiaries of a Loan Party.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options,

forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

**"Swap Termination Value"** means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

**"Synthetic Lease Obligation"** means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

**"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"Termination Date"** means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations or the "*Obligations*" under and as defined in the J.S.N. Credit Agreement are accelerated (or deemed accelerated) and the "*Revolving Commitments*" hereunder or thereunder are irrevocably terminated (or deemed terminated) in accordance with Article 8 or the applicable provisions of the J.S.N. Credit Agreement, or (iii) the termination of the Revolving Commitments in accordance with the provisions of Section 2.06 hereof, (iv) the date on which a refinancing of all the Obligations hereunder and all "*Obligations*" under and as defined in the J.S.N. Credit Agreement is consummated; and (v) the approval in a final order of the Court of, and the effectiveness of, a Plan of Compromise under the CCAA which final order has vested and is not appealable.



**“Total Outstandings”** means the outstanding principal balance of the Total Revolver Outstandings.

**“Total Revolver Outstandings”** means the aggregate Outstanding Amount of all Committed Revolving Loans.

**“Unintentional Overadvance”** means an Overadvance which, to the Agent’s knowledge, did not constitute an Overadvance when made but which has become an Overadvance resulting from changed circumstances beyond the control of the Credit Parties, including, without limitation, a reduction in the Appraised Value of property or assets included in the Borrowing Base or misrepresentation by the Loan Parties.

**“United States”** and **“U.S.”** mean the United States of America.

**“U.S. Rate Loan”** means a US\$ Loan that bears interest in accordance with Section 2.09 hereof.

**“U.S. Dollars”**, **“\$”**, and **“US\$”** mean lawful money of the United States.

**“Variance Report”** means a report, in form and substance acceptable to Agent, prepared by the Borrower’s management and approved by the Monitor reflecting on a line-item basis of each of the Borrower’s (on an individual basis) and the Combined J.S.N. Borrowers’ actual performance compared to the Budget in respect of the Obligations hereunder and the *“Obligations”* under and as defined in the J.S.N. Credit Agreement for the applicable date and time period and on a cumulative basis for the period after the Closing Date and the percentage variance of actual results in respect of the matters set out in Section 6.20 from those reflected in the Budget, along with management’s and Monitor’s explanation of such variance.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (a) 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 use of quotation marks shall be a reference to the defined term in the J.S.N. Credit Agreement, and as the context requires, this Agreement. The word **“will”** shall be construed to have the same meaning and effect as the word *“shall.”* Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) 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 or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words **“herein,” “hereof,”** and **“hereunder”**, and words of similar import when used in any Loan Document,

shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) 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.

- (b) In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "*from and including*"; the words "**to**" and "**until**" each mean "*to but excluding*"; and the word "**through**" means "*to and including*".
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in the relevant currency in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Bank Products and any other contingent Obligations, providing Cash Collateralization or other collateral as may be requested by the Agent) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) other than (i) unasserted contingent indemnification Obligations, and (ii) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or cash collateralized or otherwise collateralized as may be requested by the Agent.

### 1.03 Accounting Terms Generally.

- (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.
- (b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such

ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

- 1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement, if any, shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).
- 1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).
- 1.06 Currency Equivalents Generally.** Any amount specified in this Agreement (other than in Article 2, Article 9 and Article 10) or any of the other Loan Documents to be in Canadian Dollars or U.S. Dollars (as applicable) shall also include the equivalent of such amount in any currency other than that in which it is expressed, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with U.S. Dollars (as applicable). For purposes of this Section 1.06, the “**Spot Rate**” for a currency means, at any time, the rate determined by the Agent to be the rate quoted to the Agent as the spot rate for the purchase by the Agent of such currency with another currency through its principal foreign exchange trading office at such time.
- 1.07 Currency Matters.** Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to the Credit Parties shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in U.S. Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted in the Equivalent Amount of U.S. Dollars on the date of calculation, comparison, measurement or determination. However for the purposes of valuing the Borrowing Base and Availability, the value of any Collateral and/or the amount of the outstanding Obligations hereunder shall be converted into the Equivalent Amount thereof in Canadian Dollars; provided the Agent reserves the right to adjust any such conversion rate to take into account currency rate exchange fluctuations since the last valuation thereof.
- 1.08 Judgment Currency.**
- (a) If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other

currency (such other currency being hereinafter in this Section 1.08 referred to as the “**Judgment Currency**”) an amount due under any Loan Document in any currency (the “**Obligation Currency**”) other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 1.08 being hereinafter in this Section 1.08 referred to as the “**Judgment Conversion Date**”).

- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 1.08(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Section 1.08(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.
- (c) The term “*rate of exchange*” in this Section 1.08 means the rate of exchange at which Agent, on the relevant date at or about 12:00 noon on the relevant date, would be prepared to sell, in accordance with Agent’s normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.
- (d) Unless otherwise specified, all references to dollar amounts in this Agreement shall mean U.S. Dollars.

## ARTICLE 2 THE COMMITMENTS AND BORROWINGS

### 2.01 Committed Revolving Loans; Reserves.

Subject to the terms and conditions set forth herein, including the condition that there is no “*Availability*” under and pursuant to the J.S.N. Credit Agreement, each Revolving Lender severally agrees to make loans (each such loan, which, for certainty, does not include any loans made before the Closing Date under the J.S.N. Credit Agreement, a “**Committed Revolving Loan**”) to the Borrower from time to time, on any Business Day during the Availability Period on which the Agent’s offices are open to conduct business, provided that the “*Permitted Overadvance*” under and as defined in the J.S.N. Credit Agreement is being permanently reduced

in accordance with the Budget, in an aggregate amount not to exceed at any time outstanding the lesser of:

- (a) the amount of such Lender's Revolving Commitment, or
- (b) such Lender's Applicable Percentage of Availability hereunder, such that in each case after giving effect to any Revolving Credit Borrowing, the Total Revolver Outstandings shall not exceed the lesser of:
  - (i) the Maximum Revolving Loan Amount, and
  - (ii) the BM Borrowing Base, less any amounts advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extensions of credit stated to be required under and as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the BM Budget for such amount.

Within the limits of each Lender's Revolving Commitment, and subject to Availability, the Budget and the Initial Order and the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and re-borrow Committed Revolving Loans under this Section 2.01 above except following permanent repayments following a Prepayment Event or in connection with Permitted Sales or as provided for in Section 2.05 or 2.06, but including payments pursuant to Section 6.13.

## **2.02 Borrowings of Committed Revolving Loans.**

- (a) Committed Revolving Loans shall be U.S. Rate Loans denominated in U.S. Dollars as the Borrower may request subject to and in accordance with this Section 2.02. Subject to the other provisions of this Section 2.02.
- (b) Each Revolving Credit Borrowing shall be made upon the Borrower's irrevocable written notice to the Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received in writing by the Agent not later than 12:00 p.m. or such earlier time as the Agent may designate from time to time by written notice to the Borrower at least one (1) Business Day prior to the requested date of any Borrowing. Each Committed Loan Notice shall specify the requested date of the Borrowing, (which shall be a Business Day), and (ii) the principal amount of Committed Revolving Loans to be borrowed together with a breakdown of the stated amount and purposes of each "*Borrowing*" hereunder and under the J.S.N. Credit Agreement and a breakdown of the remaining "*Permitted Overadvance*" amount owing under the J.S.N. Credit Agreement.
- (c) Following receipt of a Request for Borrowing, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans. Each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds in the specified currency at the Agent's Office not later than 1:00 p.m. on the

Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrower in like funds by no later than 4:00 p.m. on the day of receipt by the Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Borrower.

- (d) The Agent, without the request of the Borrower, may advance as a Revolving Loan any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrower's obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Accounts as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to U.S. Rate Loans, as applicable.
- (e) Each Borrowing shall be made by the Lenders *pro rata* in accordance with their respective Applicable Percentage. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.
- (f) **[Reserved]**
- (g) The Agent and the Revolving Lenders shall have no obligation to make any Loan if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrower or the Lenders and the Borrower and each Lender shall be bound thereby. A Permitted Overadvance is for the account of the Borrower and shall constitute a U.S. Rate Loan and an Obligation and shall be repaid by the Borrower in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Revolving Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 **[Reserved]**

2.04 **[Reserved]**

## 2.05 Repayments and Prepayments.

- (a) Subject to the Initial Order and Section 6.13 hereof, the Borrower may, upon irrevocable notice from the Borrower to the Agent, at any time or from time to time voluntarily permanently prepay Revolving Loans in whole or in part; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. on the date of prepayment of U.S. Rate Loans; (ii) any prepayment of U.S. Rate Loans shall be in a principal amount of US\$500,000 or a whole multiple of US\$100,000 in excess thereof; or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.
- (b) If for any reason the Total Revolver Outstandings at any time exceed the lesser of:
- (i) the Maximum Revolving Loan Amount; and
  - (ii) the BM Borrowing Base, less any amounts advanced under the J.S.N. Credit Agreement in respect of such assets, plus the amount of the extension of credit stated to be required by the Borrower hereunder as set out in the BM Budget for such time, less the amount by which the BM Borrowing Base is less than the Budget for such amount; the Borrower shall immediately repay the Committed Revolving Loans in an aggregate amount equal to such excess.
- (c) The Borrower shall permanently reduce the "*Permitted Overadvance*" owing under and as defined in the J.S.N. Credit Agreement as reflected and in accordance with the Budget, and if there are any excess proceeds, firstly repay the Committed Revolving Loans and secondly, repay the Pre-Petition Liabilities in accordance with the provisions of the J.S.N. Credit Agreement, with proceeds and collections received by it pursuant to the cash management arrangements set out in Section 6.13 hereof.
- (d) The Borrower shall permanently reduce the "*Permitted Overadvance*" owing under and as defined in the J.S.N. Credit Agreement as reflected and in accordance with the Budget and then the Committed Revolving Loans in an amount equal to 100% of the Net Cash Proceeds received by it on account of a Prepayment Event and thereafter shall repay all other Pre-Petition Liabilities in accordance with the provisions of the J.S.N. Credit Agreement with any surplus proceeds pursuant to the cash management arrangements set out in Section 6.13 hereof.

- (e) Any repayment made pursuant to this Section above shall be applied in accordance with Section 8.03 hereof.

#### **2.06 Termination or Reduction of Commitments.**

- (a) Subject to the payment of any and all amounts due and payable to the Agent and Lenders at such time, the Borrower may, upon irrevocable notice from the Borrower to the Agent, terminate the Aggregate Revolving Commitments or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of U.S.\$1,000,000 or any whole multiple of U.S.\$1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolver Outstandings would exceed the Aggregate Revolving Commitments.
- (b) The Agent will promptly notify the Lenders of any termination or reduction of the Aggregate Revolving Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Revolving Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, commitment fees) and interest in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

#### **2.07 Repayment of Loans.**

- (a) The Borrower shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of Committed Revolving Loans outstanding on such date, along with accrued but unpaid interest and all other Obligations outstanding with respect to the Committed Revolving Loans.
- (b) Without limiting Section 1.07, if Agent receives any payment from or on behalf of a Loan Party in any currency other than the currency in which the Obligation is denominated, Agent may convert the payment (including the proceeds of realization upon any Collateral) into the currency in which such Obligation is denominated at the "*Spot Rate*" (as such term is defined in Section 1.07).

#### **2.08 Interest.**

- (a) Subject to the provisions of this Section 2.08 below, each Committed Revolving Loan shall bear interest on the outstanding principal amount thereof at a rate equal to 20% per annum;
- (b) (i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall, subject to the



*Interest Act (Canada)* and the provisions of this Section, thereafter be capitalized and bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

- (ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Borrower that all outstanding Obligations shall, subject to the *Interest Act (Canada)* and the provisions of this Section, thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.
  - (iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be compounded and due and payable upon demand.
- (c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.
- (d) If any provision of this Agreement or of any of the other Loan Documents would obligate the Borrower or any other Loan Party 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 law or would result in a receipt by such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code (Canada)*) then, notwithstanding such provisions, 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 law or so result in a receipt by such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Lender, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "*interest*" for purposes of Section 347 of the *Criminal Code (Canada)*. Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "*interest*" (as defined in the *Criminal Code (Canada)*) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

- (e) For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of a 360 day year or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.

**2.09 Fees.** The Borrower shall pay to the Agent for its own account a DIP arrangement fee in an amount equal to 1% of the Aggregate Revolving Commitments upon the execution and delivery of this Agreement. The Borrower shall also pay to the Agent for its own account a Collateral Monitoring Fee and a Commitment Fee/unused line fee at the times and in the amounts set out in the Pricing letter which shall be applicable to the accommodations of credit established hereunder.

**2.10 Computation of Interest and Fees.** All computations of fees and interest shall be made on the basis of a 360-day year, in each case and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made. For purposes of the calculation of interest on the Loans and the Outstanding Amount, all payments made by or on account of the Borrower shall be deemed to have been applied to the Loans one (1) Business Day after receipt of such payments by the Agent (as such receipt is determined pursuant to Section 2.12). Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.11 Evidence of Debt.**

- (a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "**Loan Account**") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Committed Revolving Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of

such Lender's Note and upon cancellation of such Note, the Borrower will issue, in lieu thereof, a replacement Note in favour of such Lender, in the same principal amount thereof and otherwise of like tenor.

- (b) Agent shall render monthly statements regarding the Loan Account to the Borrower including principal, interest, fees, and including an itemization of all charges and expenses constituting Credit Party Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Credit Parties unless, within thirty (30) days after receipt thereof by the Borrower, the Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

## 2.12 Payments Generally; Agent's Clawback.

- (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defence, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in U.S. Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent shall be deemed received on the next succeeding Business Day (if received before 2:00 p.m.) or the second succeeding Business Day (if received after 2:00 p.m.) and any applicable interest or fee shall continue to accrue and shall be calculated pursuant to Section 2.10. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.
- (b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Revolving Lender prior to 12:00 noon on the date of such Borrowing that Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry

rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Committed Revolving Loans. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly credit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Lender's portion of such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

- (i) Payments by Borrower; Presumptions by Agent. Unless the Agent shall have received notice from the Borrower prior to the time at 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, in immediately available funds 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 greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

- (c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Borrowing set forth in Article 4 are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.
- (d) Obligations of Lenders Several. The obligations of the Revolving Lenders hereunder to make Committed Revolving Loans are several and not joint. The failure of any Revolving Lender to make any Committed Revolving Loan, to fund any such participation or to make any payment hereunder on any date required hereunder shall not relieve any other Revolving Lender (as applicable) of its corresponding obligation to do so on such date, and or Revolving Lender (as applicable) shall be responsible for the failure of any other Revolving Lender to

so make its portion of its Committed Revolving Loan to purchase its participation or to make its payment hereunder.

- (e) Funding Source. Nothing herein 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.

**2.13 Sharing of Payments by Lenders.** If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in (a) any Revolving Lender's receiving payment of a proportion of the aggregate amount of Obligations in respect of Committed Revolving Loans greater than its pro rata share thereof as provided herein, or (b) (including, as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Revolving Lenders or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

- (i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its portion of its Committed Revolving Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party 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 such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

**2.14 Settlement Amongst Lenders.**

- (a) The amount of each Revolving Lender's Applicable Percentage of outstanding Committed Revolving Loans shall be computed weekly (or more frequently in the Agent's Permitted Discretion) and shall be adjusted upward or downward based on all Committed Revolving Loans and repayments of Committed Revolving

Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the “**Settlement Date**”) following the end of the period specified by the Agent.

- (b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Revolving Lender its Applicable Percentage of repayments, and (ii) each Revolving Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Revolving Loans made by each Revolving Lender shall be equal to such Revolving Lender’s Applicable Percentage of all Committed Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

**2.15 [Reserved]**

**2.16 Defaulting Lenders.**

- (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:
- (i) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of “*Required Lenders*” and Section 10.01.
- (ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be

determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, if so determined by the Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Committed Revolving Loans under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Committed Revolving Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Committed Revolving Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Committed Revolving Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Committed Revolving Loans of such Defaulting Lender until such time as all Committed Revolving Loans are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder without giving effect to this Section 2.16(a). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable hereunder for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).
- (b) Defaulting Lender Cure. If the Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Revolving Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Revolving Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a) above, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from

Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lenders having been a Defaulting Lender.

**ARTICLE 3  
TAXES, YIELD PROTECTION AND ILLEGALITY;  
APPOINTMENT OF LEAD BORROWER**

**3.01 Taxes.**

- (a) Payments Free of Taxes. Any and all payments by or on account of any Obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent or the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.
- (b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent or a Lender, shall be conclusive absent manifest error.
- (d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower 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) Treatment of Certain Refunds. If the Agent or any Lender determines, in its Permitted Discretion, that it has received a refund of any Taxes or Other Taxes as



to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender in the event the Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

**3.02 [Reserved]**

**3.03 [Reserved]**

**3.04 Increased Costs; Reserves on Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
- (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or
- (iii) impose on any Lender any other condition, cost or expense affecting this Agreement or Loans made by such Lender;

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

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's

holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender 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), 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.

- (c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in this Section above and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.
- (d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow or continue any Loan on the date or in the amount notified by the Borrower including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

**3.06 Mitigation Obligations; Replacement of Lenders.**

- (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, then such Lender shall use reasonable efforts to

designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

- (b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, 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 3.01, the Borrower may replace such Lender in accordance with Section 10.12.

**3.07 Survival.** All of the Borrower's obligations under this Article 3 shall survive termination of the Aggregate Revolving Commitments and repayment of the Committed Revolving Loans and all other Obligations hereunder.

**3.08 Reserved.**

#### ARTICLE 4 CONDITIONS PRECEDENT TO BORROWINGS

**4.01 Conditions of Initial Borrowing.** The obligation of each Lender to make its initial Borrowing hereunder is subject to satisfaction of the following conditions precedent:

- (a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:
- (i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and the Borrower;
  - (ii) a Note executed by the Borrower in favour of each Lender requesting a Note;
  - (iii) **[Reserved]**
  - (iv) **[Reserved]**
  - (v) **[Reserved]**

- (vi) a certificate signed by Joseph Shilon, as requested by the Agent, certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, and (B) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that upon entry of the Initial Order, all such consents, licenses and approvals have been obtained and are in full force and effect;
- (vii) promptly upon the Agent's reasonable request therefor, evidence that all insurance and cash management arrangements required to be maintained pursuant to the Loan Documents and the J.S.N. Credit Agreement, and all insurance endorsements in favour of the Agent required under the Loan Documents, have been obtained and are in effect;
- (viii) the Security Documents, including the amended and restated guarantee from the Personal Guarantor duly executed;
- (ix) all other Loan Documents, each duly executed by the applicable Loan Parties;
- (x) the Forbearance Agreement, in form and substance acceptable to Agent;
- (xi) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;
- (xii) (A) all documents and instruments, including PPSA and UCC (to the extent applicable) financing statements, required by Law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent, (B) the DDA Notifications, Credit Card Notifications, and Blocked Account Agreements required pursuant to Section 6.13 hereof, (C) control agreements with respect to the Loan Parties' securities and investment accounts, and (D) Collateral Access Agreements as required by the Agent; or
- (xiii) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require;

- (b) the Borrower shall have retained the services of Gordon Brothers Group (or such other consultant as Agent may accept in its Permitted Discretion) on terms and conditions and for a term acceptable to Agent;
- (c) **[Reserved]**
- (d) The Agent shall have received a Borrowing Base Certificate dated the Closing Date and executed by a Responsible Officer of the Borrower.
- (e) **[Reserved]**
- (f) The Agent shall have received and be satisfied with the Budget, the RISP, the Restructuring Plan, the Monitor's report in connection with the Initial Order and such other information (financial or otherwise) reasonably requested by the Agent;
- (g) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or form the basis for an appeal of the Initial Order;
- (h) Other than any Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order, there shall not have occurred any default of any Material Contract of any Loan Party;
- (i) The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document;
- (j) All fees and expenses required to be paid to the Agent on or before the Closing Date shall have been paid in full, and all fees and expenses required to be paid to the Lenders on or before the Closing Date shall have been paid in full;
- (k) The Borrower shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agent);
- (l) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "*know your customer*" and anti-money laundering rules and regulations, including without limitation the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and the *Patriot Act* with respect to the Loan Parties other than P.M.R. Inc.;
- (m) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date;

- (n) After giving effect to these transactions and the Initial Order, no Default or Event of Default shall exist on the Closing Date;
- (o) All of the Committed Revolving Loans hereunder shall be secured by Liens on all of the assets of the Loan Parties and all Post-Petition Revolving Loans shall at all times have super priority claim status subject only to Permitted Encumbrances;
- (p) All application materials and documents, including any service list in connection with all CCAA Proceedings, shall be in form and substance satisfactory to the Agent, acting reasonably;
- (q) The Initial Order shall (i) be in form and substance satisfactory to the Agent including regarding the amounts of the Court Charges and approving inter alia, this debtor-in-possession financing, the continuation of the cash management arrangements and cash collateral arrangements with the applicable Blocked Account Bank, the RISP, the Court Charges approved by the Agent, and the appointment of a CRO acceptable to Agent with powers and powers of the Monitor acceptable to the Agent, and (ii) shall have been entered and in full force and effect and shall not have been reversed, vacated, or stayed, subject to appeal or modified or superseded or negatively impacted in any way in the Agent's Permitted Discretion without the Agent's prior written consent and all necessary consents and approvals to the transaction contemplated herein and therein shall have been obtained to the satisfaction of the Agent;
- (r) The ownership, corporate structure and senior management of the Loan Parties shall be acceptable to the Agent;
- (s) The Borrower shall have received written confirmation of a repayment plan from Goldsmith and its Affiliates on terms and conditions acceptable to Agent which the Agent acknowledges it has received.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to all Borrowings.** The obligation of each Lender to honour any Request for Borrowing is subject to the following conditions precedent:

- (a) the representations and warranties of each other Loan Party contained in Article 5 or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all respects on and as of the date of such Borrowing, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and

- (ii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01;
- (b) no Default or Event of Default shall exist, including as a result of any non-compliance with Section 2.05, 6.13, 6.20 or 10.25(c) hereof or the Forbearance Agreement, or would result from such proposed Borrowing or from the application of the proceeds thereof;
- (c) the Agent shall have received a Request for Borrowing in accordance with the requirements hereof;
- (d) no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred, including as a result of the condition precedent set out in Section 4.01(q)(ii) above not being met upon each Request for Borrowing; and
- (e) no “Overadvance” or “Permitted Overadvance” under and as defined in the J.S.N. Credit Agreement not reflected in the Budget shall exist, no Overadvance hereunder shall result from such Borrowing, and there shall be no “Availability” under the J.S.N. Credit Agreement.

Each Request for Borrowing submitted by the Borrower shall be deemed to be a representation and warranty by the Borrower that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied on and as of the date of the applicable Borrowing. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Revolving Lenders otherwise direct the Agent to cease making Committed Revolving Loans, the Revolving Lenders will fund their Applicable Percentage of all Committed Revolving Loans, which are requested by the Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article 4, agreed to by the Agent; provided, however, the making of any such Loans shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article 4 on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party (other than Forever Jewellery Inc.) represents and warrants to the Agent and the other Credit Parties that:

- 5.01 Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is a corporation, unlimited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation, (b) has all requisite power and authority and all requisite governmental

licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and upon the entry of the Initial Order, carry on its business and (ii) upon the entry of the Initial Order, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its jurisdiction of incorporation, organization or formation, its jurisdiction of incorporation, organization, or formation, the location of such Loan Party's chief executive office, organization type, organization number, if any, issued by its jurisdiction of incorporation, organization or formation, and its federal employer identification number (if applicable).

- 5.02 Authorization; No Contravention.** Subject to the Initial Order, execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party has been, upon the entry of the Initial Order, duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) other than the Initial Order or any other Order made by the Court in connection with the CCAA Proceedings, or (iii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than the Court Charges and the Liens in favour of the Agent under the Security Documents); or (d) violate any Law.
- 5.03 Governmental Authorization; Other Consents.** Subject to the entry of the Initial Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.
- 5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered and upon entry of the Initial Order, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, the Initial Order and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.



**5.05 Financial Statements; No Material Adverse Effect.**

- (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Financial Statement Parties as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Financial Statement Parties as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.
- (b) The unaudited Combined balance sheet of the Financial Statement Parties dated and the related Combined statements of income or operations provided to Agent (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Financial Statement Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all Material Indebtedness and other liabilities, direct or contingent, of the Loan Parties and their Subsidiaries as of the date of such financial statements, including liabilities for Taxes, material commitments and Material Indebtedness.
- (c) **[Reserved]**
- (d) To the best knowledge of the Borrower, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base or, (iii) of the assets, liabilities, financial condition or results of operations of the Financial Statement Parties on a Combined basis.
- (e) **[Reserved]**
- (f) The Combined forecasted balance sheet and statements of income and supplemental cash flow statements of the Financial Statement Parties delivered pursuant to the provisions hereof, including the Restructuring Plan and Budget, were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.
- (g) The Loan Parties and their Subsidiaries have no Indebtedness other than Indebtedness permitted pursuant to Section 7.03.

- 5.06 Litigation.** Except under or in connection with the CCAA Proceedings, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.
- 5.07 No Default.** No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness (other than the J.S.N. Credit Agreement and any other Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order) will exist or be continuing after the Closing Date.
- 5.08 Ownership of Property; Liens.**
- (a) Subject to the entry of the Initial Order, each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Subject to the entry of the Initial Order each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.
  - (b) Schedule 5.08(b)(1) sets forth the complete address of all Real Estate that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the complete address of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Subject to the entry of the Initial Order, each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.
  - (c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Permitted Encumbrances.
  - (d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

- (e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.
- (f) Schedule 7.04 set forth a list of locations where each Loan Party's inventory and equipment (other than inventory or equipment in transit) and books and records concerning the Collateral are kept (which Schedule 7.04 shall be promptly updated by the Loan Parties upon notice to Agent as permanent Collateral locations change).

#### **5.09 Environmental Compliance.**

- (a) No Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (b) None of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on any list of properties containing Hazardous Materials maintained by any Governmental Authority or, to the knowledge of the Loan Parties, is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.
- (c) No Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

- 5.10 Insurance.** The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid. The insurance maintained by the Loan Parties and their Subsidiaries does not include store-level theft insurance, but theft insurance is maintained in respect of each manufacturing and distribution facility.
- 5.11 Taxes.** Except as set forth in Schedule 5.11 and subject to the Initial Order and in accordance with the Budget, the Loan Parties and their Subsidiaries paid all Priority Payables which are due and payable as of such date and (other than Forever Jewellery Inc., P.M.R. Inc. and Always & Forever Family Collection Incorporated) have filed all Federal, provincial, territorial, state and other material tax returns and reports required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed or registered and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect.
- 5.12 Pension Plans.** Schedule 5.12 lists all Benefit Plans maintained or contributed to by each Loan Party. No Loan Party maintains any Pension Plan.
- 5.13 Subsidiaries; Equity Interests.** The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of **Schedule 5.13**, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of the Loan Parties and each such Subsidiary. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of **Schedule 5.13** free and clear of all Liens except for those created under the Security Documents and the Initial Order. Except as set forth in **Schedule 5.13**, there are no outstanding rights to purchase any Equity Interests in any Loan Party or Subsidiary. The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of **Schedule 5.13**. All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of **Schedule 5.13** free and clear of all Liens except for those created under the Security Documents and the Initial Order. The copies of the Organization Documents of each Loan Party and each

amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

**5.14 [Reserved]**

**5.15 Disclosure.** Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries 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. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16 Compliance with Laws.** Each of the Loan Parties and each Subsidiary is in compliance (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees (other than the Initial Order) applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 5.28, 5.29, 10.17 and 10.18 hereof.

**5.17 Intellectual Property; Licenses, Etc.** The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.18 Labour Matters.** There are no strikes, lockouts, slowdowns or other material Labour disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with all applicable federal, provincial, territorial, state, local or foreign Law dealing with such matters. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other

benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation or union certification proceedings pending or, to any Loan Party's knowledge, threatened to be filed with any applicable labour relations board, organization or similar Governmental Authority, and no labour organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition or certification. There are no complaints, unfair labour practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

#### 5.19 Security Documents.

- (a) The Security Agreement creates in favour of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable Lien in respect of the Obligations. The DIP Charge shall be a super priority debtor in possession lien in the Collateral to secure the DIP Obligations. Each of the DIP Charge and the Security Agreement are subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings (including the entry of the Initial Order) are in appropriate form and have been or will be filed in all applicable public and Court offices. Upon such filings and/or the obtaining of "control" (as defined in the PPSA), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the PPSA) or by obtaining control, under the PPSA (in effect on the date this representation is made) in each case prior and superior in right to any other Person.
- (b) When the Security Agreement (or a short form thereof) is filed in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the Canadian Intellectual Property Office and the personal property security statutes in the applicable jurisdictions, including the entry of the Initial Order, the Agent shall have a fully perfected Lien

on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the Canadian Intellectual Property Office, the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

- 5.20 Transfers.** No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.
- 5.21 Deposit Accounts; Credit Card Arrangements.**
- (a) Annexed hereto as Schedule 5.21(a) is a list of all DDA's maintained by the Borrower as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.
  - (b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Borrower is a party with respect to the processing and/or payment to the Borrower of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.
- 5.22 Brokers.** Except as disclosed in Schedule 5.22, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.
- 5.23 Customer and Trade Relations.** There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.
- 5.24 Material Contracts.** Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract (other than any Material Contract or Material Indebtedness the remedies under which are stayed by the Initial Order) and have not

received any notice of the intention of any other party thereto to terminate any Material Contract.

- 5.25 Casualty.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labour dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- 5.26 [Reserved]**
- 5.27 Personally Identifiable Information.** Borrower maintains a policy for the treatment, handling and storage of consumer information and personally identifiable information in accordance with applicable Laws and a true, accurate and complete copy of the current version thereof has been provided to the Agent.
- 5.28 Anti-Bribery/Anti-Corruption.** Each of the Loan Parties is now and at all times has been in compliance with all applicable anti-bribery or anti-corruption laws, and will remain in compliance with such Laws. No Loan Party will authorize, offer or make payments directly or indirectly to any Person that would result in a violation of any applicable anti-bribery or anticorruption Laws. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the *United States Foreign Corrupt Practices Act of 1977*, as amended or in violation of the *Corruption of Foreign Public Officials Act (Canada)*, as amended; or (ii) for any purpose that could constitute a violation of applicable anti-bribery or anti-corruption laws in Canada, the United States or any other applicable jurisdiction.
- 5.29 *The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).*** The Loan Parties are in compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (the “PCMLTFA”) and all applicable regulations thereunder. Without limiting the generality of the foregoing, the Borrower has written anti-money laundering/anti-terrorist financing compliance policies and procedures in place (an “**AML Program**”) which reflect the legislative requirements of the PCMLTFA and the regulations thereunder and which: (i) are up to date and have been approved by a senior officer (as defined in the PCMLTFA) of the Borrower, (ii) assess and document the money laundering/terrorist financing risks of the Loan Parties taking into consideration: (a) its clients and business relationships; (b) its products and delivery channels; (c) the geographic location of its activities, and (d) any other relevant factors, and (iii) include provisions in respect of filing large cash transactions and suspicious transactions, keeping required records and ascertaining identity of customers. The AML Program also includes a written ongoing compliance training program for all employees, agents or other persons authorized to act on the Borrower’s behalf. The Borrower institutes and documents a review of its AML Program to test its effectiveness every two years.



**ARTICLE 6**  
**AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Subsidiary to:

**6.01 Financial Statements.** Deliver to the Agent, in form and detail satisfactory to the Agent:

- (a) [Reserved]
- (b) [Reserved]
- (c) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Financial Statement Parties (commencing with the Fiscal Month ended April 2016, a Combined balance sheet of the Financial Statement Parties as at the end of such Fiscal Month, and the related Combined statements of income or operations and supplemental cash flow information as requested by Lender for such Fiscal Month, and for the portion of the Financial Statement Parties' Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the Budget, (B) beginning with the Combined statements for the period ending April 2016, the corresponding Fiscal Month of the previous Fiscal Year, and (C) beginning with the Combined statements for the period ending April 2016, the corresponding portion of the previous Fiscal Year, all in reasonable detail, such statements to be certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations and supplemental cash flow information as requested by Lender of the Financial Statement Parties as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such statements to be certified by a Responsible Officer of the Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the financial statements of the Financial Statement Parties;
- (d) [Reserved]

**6.02 Certificates; Other Information.** Deliver to the Agent in form and detail satisfactory to the Agent:

- (a) [Reserved]
- (b) monthly, and weekly if requested by the Agent concurrently with the delivery of the reporting referred to in Section 6.01(c), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of any financial statements or reporting, the Borrower shall also provide a statement of reconciliation conforming such financial statements or reporting to GAAP;

- (c) on the Wednesday of each Fiscal Week (or, (i) if such day is not a Business Day, or (ii) if the Monday and the Tuesday of such Fiscal Week is not a Business Day, on Thursday of such Fiscal Week), a Borrowing Base Certificate showing the BM Borrowing Base and the Combined Borrowing Base of the J.S.N. Borrowers as of the close of business as of the last day of the immediately preceding week (provided that the Appraised Value percentage applied to the Eligible Inventory set forth in each such Borrowing Base Certificate shall be the percentage set forth in the most recent appraisal obtained by the Agent pursuant to Section 6.10 hereof for the applicable month in which such Borrowing Base Certificate is delivered), each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Borrower and accompanied by all applicable system generated documentation supporting the information contained within the Borrowing Base Certificate, including but not limited to inventory reporting inclusive of inventory mix by category and/or department and, where applicable, accounts receivable detail documentation, screen shots of the Loan Parties' bank accounts requested by the Agent as of the date of such Borrowing Base Certificates, and any additional documentation (including with respect to the assets of P.M.R. Inc. and Forever Jewellery Inc. and in particular Inventory of the J.S.N. Borrowers in the possession of Forever Jewellery Inc., the receivables owing by Forever Jewellery Inc. to the J.S.N. Borrowers and the receivables owing by P.M.R. Inc. to the Borrower) reasonably requested by the Agent;
- (d) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Accounting Firm, the Monitor or other Person including any retail consultant, in connection with the Restructuring Plan, refinancing efforts and status, store closures, purchases, "critical supplier" payments, the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;
- (e) promptly upon receipt, copies of any and all offers, reports and requests for information with respect to the RISP and any and all discussion papers or term sheets from any potential financiers, investors and/or purchasers;
- (f) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with any securities commission or stock exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;
- (g) the financial and collateral reports described on Schedule 6.02 hereto and in the Forbearance Agreement, at the times set forth in such Schedule or agreement;
- (h) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof

pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

- (i) promptly upon the Agent's request therefor, to use commercially reasonable efforts to provide the cashflow statements of and any other relevant reports requested by the Agent relating to each of Utopia Jewellery Co., Utopia Diamond Inc., and Global Diamonds (G.D.) Ltd. on both an individual and a Combined basis;
- (j) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;
- (k) promptly, and in any event within 5 Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any securities commission or other Governmental Authority or any stock exchange concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and
- (l) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request;
- (m) as soon as available, but in any event within 7 Business Days prior to any Court proceedings, any updates to the Budget;
- (n) weekly with the provision of each Borrowing Base Certificate, a Variance Report, a progress report of the Borrower and the Monitor regarding the Restructuring Plan, the RISP, any store closures and any related consolidations or Liquidations.

**6.03 Notices.** Promptly notify the Agent:

- (a) of the occurrence of any Default or Event of Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of any breach or non-performance of, or any default under, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof, the remedies in respect of which are not stayed in the CCAA Proceedings;
- (d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority or the

- commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws or the CCAA Proceedings;
- (e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
  - (f) of any change in any Loan Party's senior executive officers;
  - (g) of the discharge by any Loan Party of its present Accounting Firm or any withdrawal or resignation by such Accounting Firm or consultant contemplated herein;
  - (h) of any collective bargaining agreement or other labour contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;
  - (i) the non-payment of any Priority Payables when due (unless such non-payment is consistent with the Initial Order);
  - (j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of expropriation or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;
  - (k) of any material (in accordance with the standard specified in Section 6.20 herein) variance from the actual performance from the projected results in the Restructuring Plan, Budget or the Forbearance Agreement or any material variance from the milestones in the RISP;
  - (l) of any transaction of the nature contained in Article 7 hereof; and
  - (m) of any failure by any Loan Party to pay rent at any distribution centre or warehouse or store locations in accordance with the Restructuring Plan or Budget.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03 shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Subject to the Initial Order, the Restructuring Plan and the Budget, each Loan Party will, and will cause each of its Subsidiaries to, to pay all Priority Payables, and to pay its Indebtedness and other obligations, including Tax liabilities to the extent incurred after the Closing Date, before the same shall become delinquent or in default except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books

adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

**6.05 Preservation of Existence, Etc.** Preserve, renew and maintain in full force and effect its legal existence and subject to the Initial Order, and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.05; (b) subject to the Initial Order and the Restructuring Plan, take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.

**6.06 Maintenance of Properties.** (a) Subject to the Initial Order and the Restructuring Plan, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

(a) Maintain with financially sound and reputable insurance companies having an A.M. Best Rating of at least A-, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Agent as an additional insured.

- (d) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, any Lender or any other Credit Party shall be a co insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.
- (e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.
- (f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.
- (g) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.
- (h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.
- (i) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except as otherwise permitted under the Initial Order and in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records; Accountants.**

- (a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.
- (b) At all times retain an Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Accounting Firm, as may be raised by the Agent.

**6.10 Inspection Rights.**

- (a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct evaluations of the Restructuring Plan, the Budget, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired. Notwithstanding the foregoing, the Borrower covenants and agrees to engage Gordon Brothers Group (or such replacement consultant as Agent may accept in its Permitted Discretion) as a consultant to conduct such evaluations and that Borrower shall be responsible for the costs, fees and expenses (the "**Consultant Costs**") incurred in respect of such appointment.
- (b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) the Borrower's practices in

the computation of the Borrowing Base and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (ii) the Restructuring Plan and Budget. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such examinations and evaluations. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake as many commercial finance examinations as it deems necessary or appropriate, at Borrower's expense.

- (c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets (and grading of diamond and other gem stone Inventory) included in the Borrowing Base. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such appraisals. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake as many inventory appraisals at the Loan Parties' expense as it deems necessary or appropriate.

**6.11 Use of Proceeds.** Use the proceeds of the Borrowings to finance the working capital requirements of the Borrower, including the purchase of inventory in the ordinary course of business and in accordance with the Budget and the Restructuring Plan but for greater certainty, shall not be drawn down to pay down principal of the Pre-Petition Liabilities.

**6.12 Additional Loan Parties.** Notify the Agent at the time that any Person becomes a Subsidiary and promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guarantee or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in Section 4.01 and favourable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness, in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the inclusion of any acquired assets in the computation of the Borrowing Base.



### 6.13 Cash Management.

- (a) On or prior to the Closing Date the Borrower, and within 10 days following the Closing Date each of Always & Forever Family Collection Incorporated and P.M.R. Inc., shall:
- (i) deliver to the Agent copies of notifications (each, a "**Credit Card Notification**") substantially in the form attached hereto as **Exhibit G** which have been executed on behalf of such Loan Party and the applicable Credit Card Issuer or Credit Card Processor and delivered to such Loan Party's Credit Card Issuers and Credit Card Processors listed on **Schedule 5.21(b)** and deliver to such Credit Card Issuers and Credit Card Processors a copy of the Initial Order promptly following the Closing Date as may be reasonably required to give effect thereto; and
  - (ii) enter into a Blocked Account Agreement satisfactory in form and substance to the Agent with each Blocked Account Bank (collectively, together with the Concentration Account, the "**Blocked Accounts**") and deliver to each Blocked Account Bank a copy of the Initial Order promptly following the Closing Date as may be reasonably required to give effect thereto; and
  - (iii) at the request of the Agent, deliver to the Agent copies of notifications (each, a "**DDA Notification**") substantially in the form attached hereto as **Exhibit H** which have been executed on behalf of such Loan Party and delivered to each depository institution listed on Schedule 5.21(a).
- (b) From and after the Closing Date, such Loan Parties (other than Always & Forever Collections Incorporated and P.M.R. Inc. which shall be within ten (10) days of the Closing Date) shall via ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account all of the following:
- (i) all amounts on deposit in each DDA (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);
  - (ii) all payments due from Credit Card Processors and Credit Card Issuers and proceeds of all credit card charges;
  - (iii) all cash receipts from the Disposition of Inventory and other assets (whether or not constituting Collateral);
  - (iv) all proceeds of Accounts; and
  - (v) all Net Proceeds, and all other cash payments received by such Loan Party from any Person or from any source or on account of any Disposition or

other transaction or event, including, without limitation, any Prepayment Event or Permitted Sale.

- (c) Each Blocked Account Agreement shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account controlled by the Agent at Bank of Montreal, Royal Bank of Canada, TD Bank, Bank of Nova Scotia and any other applicable Blocked Account Bank (the "**Concentration Account**"), of all cash receipts and collections received by the JSN Borrowers (and all other Loan Parties upon the issuance of a "*block notice*" under the applicable Blocked Account Agreement) from all sources (the "**Receipts and Collections**"), including, without limitation, the following:
- (i) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject Blocked Account by the Blocked Account Bank);
  - (ii) all amounts required to be deposited into the Blocked Accounts pursuant to clause (b) above; and
  - (iii) any other cash amounts received from any other source, on account of any type of transaction or event;

provided, however, the Agent may, in its sole discretion, permit the Borrower to have one or more "*intermediate*" Blocked Account Agreements, whereby such agreements would provide, upon notice from the Agent, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) all Receipts and Collections to another Blocked Account, as opposed to the Concentration Account and the Agent will give credit to the existing customers of the Borrower for existing "*layaway deposits*" which may be held by them in the Concentration Account prior to any bankruptcy, receivership or liquidation of the Borrower.

The Concentration Account shall at all times be under the sole dominion and control of the Agent and all funds therein shall be wired to an account specified by Agent no less frequently than daily. The Agent shall cause all funds of the J.S.N. Borrowers on deposit in the Concentration Account to be applied firstly to the "Permitted Overadvance" under the J.S.N. Credit Agreement until it has been eliminated in full, then secondly, to the Obligations hereunder, and thirdly, to the Pre-Petition Liabilities of the Borrower in accordance with Sections 2.05 and 8.03 of this Agreement, the Forbearance Agreement, the Budget and the Initial Order. The Loan Parties hereby acknowledge and agree that (i) the JSN Borrowers have no right of withdrawal from the Concentration Account, and (ii) the funds on deposit in the Concentration Account or any other deposit account shall at all times be collateral security for all such DIP Obligations and obligations with respect to Pre-Petition Liabilities of the JSN Borrowers. In the event that, notwithstanding the provisions of this Section 6.13, the JSN Borrowers receive or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be

held and be deemed to be held separate apart and in trust by them exclusively for the Agent, shall not be, and shall be deemed not to be, commingled with their other funds or deposited in any account of theirs and shall, not later than the Business Day after receipt thereof, be deposited into the Blocked Account or dealt with in such other fashion as such JSN Borrower may be instructed by the Agent.

- (d) Upon the request of the Agent, such JSN Borrower shall cause bank statements and/or other reports to be delivered to the Agent not less often than weekly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above and provide the Agent with “*view only*” access to their bank accounts identified by the Agent.
- (e) If the Agent does not require DDA Notifications to be delivered on the Closing Date in accordance with Section 6.13 above, then the Borrower shall, upon the request of the Agent at any time after the Closing Date, deliver to the Agent copies of DDA Notifications, which have been executed on behalf of the applicable Loan Party and delivered to each applicable depository institution.
- (f) Each Loan Party hereby acknowledges, confirms and agrees that the Agent shall have the contractual right to continue to apply the contemplated cash management arrangements contemplated herein, under the Forbearance Agreement and under the J.S.N. Credit Agreement notwithstanding any Default, termination or non-renewal of this Agreement or the J.S.N. Credit Agreement or any of the credit facilities contemplated herein or therein or any stay of proceedings or filing under any Debtor Relief Law or any other applicable Law as a matter of, and shall be considered and deemed to be a matter of, replacing and monitoring the Lender’s Collateral and not as an enforcement of any of their security or Liens.

#### **6.14 Information Regarding the Collateral.**

- (a) Furnish to the Agent at least thirty (30) days prior written notice of any change in:
  - (i) any Loan Party’s name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party’s chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any warehouse, office or distribution facility at which Collateral owned by it is located (including the establishment of any such new warehouse, office or distribution facility); (iii) any Loan Party’s organizational structure or jurisdiction of incorporation, organization or formation; or (iv) any Loan Party’s federal taxpayer identification number or organizational identification number assigned to it by its jurisdiction of incorporation, organization or formation. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the PPSA, UCC or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

- (b) If any of the information on any of the Schedules hereto becomes inaccurate or misleading in any material respect as a result of changes after the Closing Date, the Borrower shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

#### **6.15 Physical Inventories.**

- (a) Cause physical inventories to be undertaken on 1 Business Day notice, at the expense of the Loan Parties, as may be required by the Agent in its Permitted Discretion, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Borrower, within five days following the completion of 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 Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.
- (b) Permit the Agent, in its Permitted Discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

#### **6.16 Environmental Laws.** (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise

comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

#### **6.17 Further Assurances.**

- (a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.
- (b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien (subject to Permitted Encumbrances) under the Security Documents and Initial Order upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base.
- (c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by the Borrower after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of the Borrower in the property that is the subject of such Lease.
- (d) Upon the request of the Agent, cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

- (e) Upon the request of the Agent, cause any of its landlords to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.
- 6.18 Compliance with Terms of Leaseholds.** Except as otherwise expressly permitted hereunder, the Restructuring Plan, the Budget and the Initial Order, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing.
- 6.19 Material Contracts.** Subject to the Restructuring Plan, the Budget and the Initial Order, (a) perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect in the ordinary course of business, (c) enforce each such Material Contract in accordance with its terms, (d) take all such action to such end as may be from time to time requested by the Agent, (e) upon request of the Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (f) cause each of its Subsidiaries to do the foregoing.
- 6.20 Restructuring Plan.** Strictly comply with the RISP and generally operate the business of the Loan Parties in a manner consistent with the Restructuring Plan, Forbearance Agreement and Budget approved by the Monitor and the Agent (including meeting all timelines and milestones set out in the RISP, the Forbearance Agreement and the Restructuring Plan) without a negative variance of sales, cash receipts, categorical expenditures, loan balances, Borrowing Base calculations, Inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and/or a negative variance of Availability by more than 10%, which shall all be tested each week pursuant to a Variance Report (on an individual and Combined basis) and Borrowing Base Certificate delivered by the Borrower to the Agent.
- 6.21 Compliance with Laws.** Ensure that the representations and warranties set forth in Sections 5.28 and 5.29 shall at all times remain true and accurate in all respects.
- 6.22 Extension Order.** Within 10 days of the Closing Date, the Borrower shall obtain an order under the CCAA extending the stay of proceedings granted in the Initial Order by at least 90 days, which order shall be in form and substance satisfactory to the Agent which for greater certainty shall provide for the payment of all interest payable under the J.S.N. Credit Agreement, including interest on the "*Term Loans*", "*Revolving Loans*" and the "*Permitted Overadvance*" under and as defined in the J.S.N. Credit Agreement.

**ARTICLE 7**  
**NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

- 7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under any Court order, PPSA, UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances and the Court Charges.
- 7.02 Investments.** Make any Investments, except Permitted Investments existing immediately prior to the Closing Date.
- 7.03 Indebtedness.** (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; or (b) issue and sell any other Equity Interests of any Loan Party unless on terms and conditions acceptable to Agent in its sole discretion, (ii) such Equity Interests provide that all dividends and other Restricted Payments) in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.
- 7.04 Fundamental Changes.** Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, (or agree to do any of the foregoing).
- 7.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions and Permitted Sales all in accordance with the Initial Order and the Restructuring Plan.
- 7.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contribution without Agent's prior written consent except:
- (a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party; and

- (b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person.

- 7.07 Prepayments of Indebtedness.** Except as otherwise permitted pursuant to the Initial Order and subject to the Budget, or as consented to by the Agent, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, other than the Pre-Petition Liabilities, the Obligations hereunder, and Permitted Indebtedness provided for in the Budget and permitted by the Initial Order or make any payment in respect of any Subordinated Indebtedness.
- 7.08 Change in Nature of Business.** Engage in any line of business substantially different from the Business conducted by the Loan Parties and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.
- 7.09 Transactions with Affiliates.** Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favourable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate (other than with Forever Jewellery Inc. and P.M.R. Inc. which transactions shall not be permitted under any circumstances without Agent's prior written consent other than as permitted under the Forbearance Agreement), provided that all of the foregoing are in accordance with the Budget but such restriction shall not apply to (a) a transaction between or among the Loan Parties or their foreign Affiliates provided such transactions and amounts are in accordance with the Forbearance Agreement and the Budget and approved by the Agent, (b) advances for commissions, travel and other similar purposes in the ordinary course of business to the CRO and employees in accordance with the Budget and approved by the Agent, and (c) the payment of reasonable fees and out-of-pocket costs and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, the CRO or employees of the Borrower or any of its Subsidiaries in accordance with the Budget and approved by the Agent. For greater certainty, no payments or distributions or loans or guarantees or other transactions shall be made by any applicable Loan Party to or with P.M.R. Inc., Forever Jewellery Inc. (other than as permitted under the Forbearance Agreement), Whitpay Inc. or SUM Investments Inc. without Agent's prior written consent.
- 7.10 Burdensome Agreements.** Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favour of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favour of any holder of Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property



financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

- 7.11 Use of Proceeds.** Use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; or (b) for purposes other than those permitted under this Agreement.
- 7.12 Amendment of Material Documents.** Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than in accordance with the Initial Order and the Restructuring Plan or on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect.
- 7.13 Fiscal Year.** Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP, or as may be approved by the Agent in writing.
- 7.14 Changes in Name or Jurisdiction.** Change its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation, (ii) jurisdiction of incorporation, organization or formation, (iii) chief place of business or chief executive office or the location of its records concerning the Collateral, without at least thirty (30) days' prior written notice to Agent and the acknowledgement of Agent that all actions required by Agent, including those to continue the perfection of its Liens, have been completed.
- 7.15 Deposit Accounts; Credit Card Processors.** Open new DDA's or Blocked Accounts unless the Loan Parties shall have delivered to the Agent appropriate DDA Notifications (to the extent requested by Agent pursuant to the provisions of Section 6.13(a) hereof) or Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.13 hereof.
- 7.16 [Financial Covenants – Intentionally deleted]**
- 7.17 DIP Loan Restrictions.** The Loan Parties will not consent to or permit to exist any of the following:
- (a) any order which authorizes the rejection (other than those Leases contemplated in the Restructuring Plan) or assumption of any Lease of the Borrower without the Monitor's approval and the Agent's prior consent, whose consent may not be unreasonably withheld;

- (b) any modification (other than extension of the Initial Order in the ordinary course with the prior written consent of the Agent), stay, vacation or amendment to the Initial Order to which the Agent has not consented in writing;
- (c) a priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever), equal or superior to the DIP Charge and Agent's Liens, except with respect to the (i) statutory Liens and charges not capable of being subordinated by the entry of the Initial Order, and (ii) the Court Charges other than the DIP Charge;
- (d) any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations and the Pre-Petition Liabilities, other than (i) the Court Charges, and (ii) Permitted Encumbrances having priority by operation of Applicable Law;
- (e) any order which authorizes the return of any of the Loan Parties' property pursuant to any provision of the CCAA or applicable Law;
- (f) any order which authorizes the payment of any Indebtedness (other than the Pre-Petition Liabilities, Indebtedness reflected in the approved Budget, and other Indebtedness approved by the Monitor and consented to by the Agent) incurred prior to the Petition Date; or
- (g) any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

**7.18 Pension Plans.** Establish or maintain any Pension Plan.

## ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

- (a) Non-Payment. The Borrower or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan, or (ii) any interest on any Loan, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.04, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13, 6.14, 6.18, 6.20, 6.22, or Article 7; or (ii) any Guarantor or Personal Guarantor fails to perform or observe any material term, covenant or agreement contained in any Facility Guarantee or Personal Guarantee; or (iii) any of the Loan Parties fails to perform or observe any material term, covenant or agreement contained in any Security Agreement or the J.S.N. Credit Agreement to which it is a party; or

- (c) Other Defaults. Any Loan Party or Personal Guarantor fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document or Court order on its part to be performed or observed and such failure continues for five (5) Business Days; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate or Variance Report shall be incorrect or misleading in any material respect when made or deemed made; or
- (e) Cross-Default. Unless payment is stayed by the Initial Order; (i) any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) fails to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or
- (f) Insolvency Proceedings, Etc. Any Loan Party or any of their Subsidiaries institutes, consents to (or takes any action to effectuate or consent to) the institution of or declares its intention to institute any proceeding under any Debtor Relief Law (other than the CCAA Proceedings in respect of the Borrower), or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, receiver and manager, mortgagee in possession, sequestrator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator receiver and manager, mortgagee in possession, sequestrator or similar officer is appointed and the appointment is not immediately stayed and continues undischarged and undismissed for thirty (30) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and is not immediately stayed and continues undismissed

or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or

- (g) Inability to Pay Debts; Attachment. (i) Any Guarantor or any of their Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not immediately stayed and released, vacated or fully bonded within ten (10) days after its issuance or levy; or
- (h) Judgments. There is entered against any Loan Party or any of their Subsidiaries (i) one or more Post-Petition final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding C\$250,000 (or the equivalent thereof in any other currency) (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary Post-Petition final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or
- (i) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document or Court Order; or (ii) any Lien purported to be created under any Security Document or Court Order shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document or Court Order; or
- (j) Change of Control. There occurs any Change of Control; or
- (k) Cessation of Business. Except as otherwise expressly permitted hereunder and subject to the Initial Order and under the Restructuring Plan, any Loan Party shall take any action to suspend the operation of its business, shall cease to conduct its business in the ordinary course or advise the Agent that it plans to cease the ordinary conduct of its business, liquidate all or a material portion of its assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business other than a Liquidation permitted hereunder; or

- (l) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or
- (m) Breach of Contractual Obligation. Unless stayed by the Initial Order, any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; or
- (n) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, provincial, territorial, state, municipal, or other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony or indictable offense; or
- (o) Death or Incapacity. The Personal Guarantor dies or is declared incompetent by a court of competent jurisdiction; or
- (p) Guarantee. The termination or attempted termination of any Facility Guarantee except as expressly permitted hereunder or under any other Loan Document; or
- (q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the “**Subordinated Provisions**”) shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or
- (r) Material Adverse Effect. A Material Adverse Effect shall occur; or
- (s) Initial Order:
  - (i) the entry of an order which stays, modifies (other than extensions of the Initial Order with the prior written consent of the Agent), or reverses the Initial Order or which otherwise materially adversely affects the effectiveness of the Initial Order without the express written consent of the Agent;
  - (ii) the entry of any order without the prior written consent of the Agent which provides relief from the automatic stay made under the Initial Order or the CCAA which permits any creditor to realize upon, or to exercise any right

or remedy with respect to, any asset of the Borrower or to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination would reasonably be likely to have a Material Adverse Effect as determined by the Agent in its Permitted Discretion;

- (iii) the filing of any application by any Loan Party without the express prior written consent of the Agent for the approval of any super-priority claim including in the CCAA Proceedings which is *pari passu* with or senior to the priority of the DIP Charge or Agent's Liens, as the case may be, or there shall arise any such super-priority claim under the CCAA (in each case, other than Court Charges);
- (iv) the payment or other discharge by the Borrower of any Pre-Petition Indebtedness, except as expressly permitted hereunder, or in the Budget or by order in the CCAA Proceeding to which order the Agent has provided their written prior consent;
- (v) the failure of the Borrower (i) to comply with each and all of the terms and conditions of the Initial Order, or (ii) to materially comply with any other order entered in the CCAA Proceeding;
- (vi) the filing of any motion by any Loan Party or the entry of any order including in the CCAA Proceeding: (i) (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Loan Party from any Person other than the Agent (unless the proceeds of such financing are used to pay in full of all Pre-Petition Liabilities and all Obligations (collectively, the "**Unliquidated Claims**"), and the establishment of a reserve account for all Other Liabilities and indemnification obligations hereunder), (B) granting a Lien on, or security interest in any of the Collateral, other than with respect to this Agreement or as otherwise permitted herein (unless such Liens are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Pre-Petition Liabilities, all Obligations, other Unliquidated Claims and indemnification obligations hereunder), or (C) dismissing the CCAA Proceeding, or (ii) the filing of any motion by any Loan Party matters specified in the foregoing clause (i) that is not immediately stayed and dismissed or denied within forty-five (45) days of the date of the filing of such motion (or such later date agreed to in writing by the Agent);
- (vii) the filing of a motion by any Loan Party seeking approval of a Plan of Compromise or the entry of any order including confirming a Plan of Compromise, that does not require repayment in full in cash of all Obligations and Pre Petition Liabilities on the date of a final approval order under the CCAA, and the effectiveness of any such plan or Plan of

Compromise or Plan of Compromise is defeated by the Borrower's creditors;

- (viii) the filing of any pleading by any Person challenging the validity, priority, perfection, or enforceability of the Loan Documents, the Pre-Petition Liabilities, or any Lien granted pursuant to the Initial Order or the Pre-Petition Loan Documents, or (b) any Lien granted pursuant to the Initial Order or the Pre-Petition Loan Documents is determined to be null and void, invalid or unenforceable by Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the CCAA Proceeding or any other proceeding; or
- (ix) the failure of the Agent to receive a Qualified LOI (as defined in the RISP); or
- (t) the failure of the Loan Parties to meet any milestones or deadlines or maturity dates in the RISP or the Forbearance Agreement or is otherwise in default thereunder.

**8.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

- (a) declare the Revolving Commitments of each Revolving Lender to make Committed Revolving Loans to be terminated, whereupon such Revolving Commitments and obligation shall be terminated;
- (b) **[Reserved]**
- (c) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;
- (d) capitalize any accrued and unpaid interest by adding such amount to the outstanding principal balance of the Loans, at which time such capitalized amount shall bear interest at the Default Rate;
- (e) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

- (f) seek the appointment of a receiver, receiver-manager, monitor or keeper (a "Receiver") under the laws of Canada or any Province thereof including to take possession of all or any portion of the Collateral of Loan Parties or to operate same and, to the maximum extent permitted by law, may seek the appointment of such a receiver without the requirement of prior notice or a hearing. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed agent of Loan Parties and not Agent and the Lenders, and Agent and the Lenders shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of Collateral of the Loan Parties, to preserve Collateral of the Loan Parties or its value, to carry on or concur in carrying on all or any part of the business of the Loan Parties and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral of the Loan Parties. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Loan Parties, enter upon, use and occupy all premises owned or occupied by the Loan Parties wherein Collateral of the Loan Parties may be situated, maintain Collateral of the Loan Parties upon such premises, borrow money on a secured or unsecured basis and use Collateral of the Loan Parties directly in carrying on the Loan Parties' business or as security for loans or advances to enable the Receiver to carry on the Loan Parties' business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Agent, all money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to Agent. Every such Receiver may, in the discretion of Agent, be vested with all or any of the rights and powers of Agent and the Lenders. Agent may, either directly or through its nominees, exercise any or all powers and rights given to a Receiver by virtue of the foregoing provisions of this paragraph;
- (g) The Agent or any Lender may purchase, in any public or private sale conducted by the Agent (whether by judicial action or otherwise) in accordance with applicable Law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Agent, upon written consent of the Required Lenders, to Credit Bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders.

provided, however, that upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Agent or any Lender; and

provided further that, any exercise of remedies shall be subject to approval in the CCAA Proceedings and shall only be requested upon seven (7) Business Days' prior written notice to the Loan Parties and the Monitor (unless the Event of Default occurred under



Section 8.01(a), 8.01(f), 8.01(g), 8.01(k), or 8.01(s), in which case the remedies under Section 8.02 require 1 Business Day's notice to the Loan Parties or the Monitor).

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

**8.03 Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order, in each case whether or not such Obligations are allowed or allowable in any bankruptcy or insolvency proceeding or under any Debtor Relief Law:

First, to payment of that portion of the Pre-Petition Liabilities constituting "*Permitted Overadvances*" under and as defined in the J.S.N. Credit Agreement constituting unpaid principal rateably among the "*Revolving Lenders*" thereunder in proportion to their respective amounts described in this clause payable to them until such amount has been eliminated in full;

Next, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article 3 and Section 2.09) payable to the Agent;

Next, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including fees, charges and disbursements of counsel to the Lenders and amounts payable under Article 3), rateably among them in proportion to the amounts described in this clause payable to them;

Next, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances hereunder;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Revolving Loans and other Obligations and fees, rateably among the Revolving Lenders in proportion to the respective amounts described in this clause payable to them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Committed Revolving Loans, rateably among the Revolving Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations, but excluding any Other

Liabilities), rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations arising from Bank Products to the extent secured under the Security Documents, rateably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Pre-Petition Liabilities, including firstly, all accrued and unpaid interest on the "*Permitted Overadvance*" under and as defined in the J.S.N. Credit Agreement and all fees and amounts payable under the Forbearance Agreement, and secondly, all other interest, fees, costs, expenses and principal owing under the J.S.N. Credit Agreement in accordance with the provisions of the J.S.N. Credit Agreement; rateably among the Credit Parties in proportion to the respective amounts described in the J.S.N. Credit Agreement held by them; and

Last, the balance, if any, after all of the "*Obligations*" hereunder and under the J.S.N. Credit Agreement have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

## ARTICLE 9 THE AGENT

- 9.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Salus to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the terms "*agent*" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.
- 9.02 Rights as a Lender.** The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "**Lender**" or "**Lenders**" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any

other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02); or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

- 9.04 Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for any Credit Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.
- 9.05 Delegation of Duties.** The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Agent. The Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.
- 9.06 Resignation of Agent.** The Agent may at any time give written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a financial institution with an office in Canada or the United States, or an Affiliate of any such financial institution with an office in Canada or the United States. If no such successor shall have been so appointed by the Required

Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; 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 Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided 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 this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

- 9.07 Non-Reliance on Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.
- 9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agent or Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent or a Lender hereunder.
- 9.09 Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein

expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the Agent and such Credit Parties hereunder) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, receiver and manager, mortgagee in possession, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10 Collateral and Guarantee Matters.** The Credit Parties irrevocably authorize the Agent, at its option and in its Permitted Discretion:

- (a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;
- (b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and
- (c) to release any Guarantor from its obligations under the Facility Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guarantee pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guarantee, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

**9.11 Notice of Transfer.** The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

**9.12 Reports and Financial Statements.** By signing this Agreement, each Lender:

- (a) agrees to furnish the Agent (and thereafter at such frequency as the Agent may reasonably request) with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender and, if such notice is received, the Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;
- (b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates, financial statements and other Borrower Materials required to be delivered by the Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "**Reports**");
- (c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials, and shall not be liable for any information contained in any Borrower Materials (including any Report);
- (d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;
- (e) agrees to keep all Reports and other Borrower Materials confidential in accordance with the provisions of Section 10.07 hereof; and

- (f) 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 and other Borrower Materials in connection with any Borrowings 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; 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 legal 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.

- 9.13 Agency for Perfection.** Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders in assets which, in accordance with applicable Law, 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 otherwise deal with such Collateral in accordance with the Agent's instructions.
- 9.14 Indemnification of Agent.** Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by the Agent, and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, and their Related Parties' gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.
- 9.15 Relation among Lenders.** The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.
- 9.16 Co-Syndication Agents; Documentation Agent and Co-Lead Arrangers.** Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Documentation Agent nor the Co-Lead Arrangers shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.
- 9.17 [Reserved]**



**ARTICLE 10**  
**MISCELLANEOUS**

**10.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;
- (b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving Commitments hereunder or under any other Loan Document without the written Consent of such Revolving Lender;
- (c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the applicable rate of interest that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary (i) to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;
- (d) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;
- (e) change any provision of this Section or the definition of "*Applicable Lenders*", "*Required Lenders*", "*Required Revolving Lenders*", or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

- (f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;
- (g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;
- (h) increase the Aggregate Revolving Commitments without the written Consent of each Revolving Lender;
- (i) change the definition of the term "*Borrowing Base*" or any component definition thereof as it relates to the Borrower if as a result thereof the amounts available to be borrowed by the Borrower would be increased without the written Consent of each Lender, provided that the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves;
- (j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and
- (k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (ii) the Pricing Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Deteriorating Lender or Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Lender may not be increased or extended without the consent of such Lender, and (y) any waiver, amendment or modification requiring the consent of all Lenders.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, (x) no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or

the release of Collateral or any Loan Party, and (y) any Loan Document may be amended and waived with the written consent of the Agent at the request of the Borrower without the need to obtain the consent of any Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause any Loan Document to be consistent with this Agreement and the other Loan Documents.

#### **10.02 Notices; Effectiveness; Electronic Communications.**

- (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:
- (i) if to the Loan Parties or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and
  - (ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.
- (b) Timing. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).
- (c) Electronic Communications. Notices and other communications to the Loan Parties and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its Permitted Discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not

sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

- (d) The Internet. In no event shall the Agent or any of its Related Parties (each, an "Agent Party") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses or any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the internet.
- (e) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.
- (f) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.** No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

**10.04 Expenses; Indemnity; Damage Waiver.**

- (a) Costs and Expenses. The Borrower shall pay all Credit Party Expenses.
- (b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, including any indemnities given by any Indemnitee in connection herewith or any Pre-Petition Loan Document, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any other Loan Party or any of the Loan Parties’ directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction.
- (c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agent (or any such

sub-agent), or such Related Party, as the case may be, 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 (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

- (d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, 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, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.
- (e) Payments. All amounts due under this Section shall be payable on demand therefor.
- (f) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its Permitted Discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate

per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 10.06 Successors and Assigns.

- (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) Assignments by Lenders. Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans; provided that any such assignment shall be subject to the following conditions:
- (i) Minimum Amounts:
- (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and
- (B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than C\$5,000,000 (or the equivalent thereof in U.S. Dollars) unless the Agent otherwise consents; provided,

however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

- (ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;
- (iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:
  - (A) the consent of the Agent; and
  - (B) the consent of the Agent shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.
- (iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of C\$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from the Lenders having been a Defaulting Lender. Upon request, the Borrower (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under



this Agreement that does not comply with this subsection 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 10.06(d).

- (c) Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.
- (d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder. 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, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section and not being a Defaulting Lender hereunder or under the J.S.N. Credit Agreement, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b) and to the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender, acting for this purpose as an agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts and other Obligations from time to time (each a "**Participation Register**"). The entries in

each Participation Register shall be conclusive absent manifest error and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under Section 3.01, 3.04 and 10.08). The Participation 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.

- (e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 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. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01 as though it were a Lender.
- (f) Certain Pledges. Any Lender may at any time pledge, hypothecate or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge, hypothecate or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge, hypothecate or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
- (g) Electronic Execution of Assignments. The words "execution", "signed", "signature", and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the PPSA and the *Electronic Commerce Act, 2000* (Ontario).
- (h) Transactions by Salus Entity. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, (A) neither Salus nor any Affiliate thereof (each, a "Salus Entity") shall be required to comply with this Section 10.06 in connection with any transaction involving any other Salus Entity or any of its or their lenders or funding or financing sources, and no Salus Entity shall have any obligation to disclose any such transaction to any Person, and (B) there shall be no limitation or restriction on (i) the ability of any Salus Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation to any other Salus Entity or any lender or financing or funding source of a Salus Entity or (ii) any such lender's or funding or financing source's ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation; provided,

however, that Salus shall continue to be liable as a “Lender” under this Agreement and the other Loan Documents unless such other Person complies with the provisions of this Agreement to become a “Lender”.

**10.07 Treatment of Certain Information; Confidentiality.** Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, funding sources, lawyers, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the Insurance Bureau of Canada or the National Association of Insurance Commissioners), (c) to the extent required by applicable Law or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) to their auditors in connection with any audit, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, “**Information**” means all information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information, and (c) it will handle such material non-public information in accordance with applicable Law.

**10.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to

property of a Loan Party, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, 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, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents 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 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf., or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**10.10 Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or

unsatisfied. Further, the provisions of Sections 3.01, 3.04, and 10.04 and Article 9 shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations that may thereafter arise under Section 10.04.

- 10.11 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 10.12 Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrower are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrower may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:
- (a) the Borrower shall have paid to the Agent the assignment fee specified in Section 10.06;
  - (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
  - (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and
  - (d) such assignment does not conflict with applicable Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**10.13 Governing Law; Jurisdiction; Etc.**

- (a) GOVERNING LAW. THIS AGREEMENT SHALL BE EXCLUSIVELY (WITHOUT REGARD TO RULES OR PRINCIPLES RELATING TO CONFLICTS OF LAWS) GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.
- (b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE PROVINCE OF ONTARIO 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 LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.
- (c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENCE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.
- (d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL

AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

- (e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT LOCATED IN THE PROVINCE OF ONTARIO AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

**10.14 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.15 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favour of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those

obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by Law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

#### 10.16 Anti-Money Laundering Legislation.

- (a) Each Loan Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *USA Patriot Act* (Title III of Pub. L. 1007-56 (signed into law October 26, 2001), and other applicable anti-money laundering, anti-terrorist financing, government sanction and “*know your client*” laws, whether within Canada, the United States or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and Agent may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. The Loan Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective assign or participant of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.
- (b) If Agent has ascertained the identity of the Loan Parties or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then 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 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 Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any



Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

- 10.17 USA PATRIOT Act Notice.** Each Lender that is subject to the *Patriot Act* (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the *Patriot Act*. Each Loan Party is in compliance, in all material respects, with the *Patriot Act*. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "*know you customer*" and anti-money laundering rules and regulations, including the *Patriot Act*.
- 10.18 Economic Sanction Laws.** Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate any applicable foreign asset control or economic sanctions regulations, including the provisions of the *United Nations Act* (Canada), the *Special Economic Measures Act* (Canada), the *Criminal Code* (Canada) or any other economic sanctions laws administered by Foreign Affairs and International Trade Canada or the Department of Public Safety Canada (collectively, the "**Economic Sanction Laws**") or any enabling legislation or executive order relating thereto. Furthermore, none of the Borrower or their Affiliates (a) is a Person designated by the Canadian government on any list set out in any Economic Sanction Law including the United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism or the *Criminal Code* (Canada) with which a Canadian Person cannot deal with or otherwise engage in business transactions (or is controlled by or acts, directly or indirectly, for or on behalf of any such Person) or (b) is a Person who is otherwise the target of Canadian economic sanctions laws such that a Canadian Person cannot deal or otherwise engage in business transactions with such Person.
- 10.19 Time of the Essence.** Time is of the essence of the Loan Documents.
- 10.20 Press Releases.**
- (a) Each Credit Party executing this Agreement 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 its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.
  - (b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material, including any "*tombstone*" or comparable advertising, on its

website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

#### 10.21 Additional Waivers.

- (a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.
- (b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defence or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).
- (c) To the fullest extent permitted by applicable Law, each Loan Party waives any defence based on or arising out of any defence of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election,

foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defence arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

#### 10.22 Guarantee.

- (a) Each Guarantor is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Loan Party hereunder or other Obligations incurred directly and primarily by any other Loan Party (an "**Accommodation Payment**"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Party in an amount, for each of such other Loan Party, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Applicable Percentage ("**Allocable Amount**") and the denominator of which is the sum of the Allocable Amounts of all of the Loan Party. As of any date of determination, the "*Allocable Amount*" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Loan Party hereunder without rendering such Loan Party insolvent.

- (b) Each Guarantor, subject to any limitations of liability in the Personal Guarantee or any other applicable Facility Guarantee, hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all Obligations of each other party hereto.
- (c) Each Guarantor hereby absolutely, unconditionally and irrevocably waives (i) promptness, diligence, notice of acceptance, notice of presentment of payment and any other notice hereunder, (ii) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (iii) any requirement that Agent or any Lender protect, secure, perfect or insure any security interest or Lien or any property subject thereto or exhaust any right or take any action against any other Loan Party, or any Person or any Collateral, (iv) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations, and (v) any defense arising by any lack of capacity or authority or any other defense of any Loan Party or any notice, demand or defense by reason of cessation from any cause of Obligations other than payment and performance in full of the Obligations by the Loan Parties and any defense that any other guarantee or security was or was to be obtained by Agent.
- (d) No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any other Loan Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder.
- (e) The Guaranty hereunder is one of payment and performance, not collection, and the obligations of each Guarantor hereunder are independent of the Obligations of the other Loan Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the terms and conditions of this Section, irrespective of whether any action is brought against any other Loan Party or other Persons or whether any other Loan Party or other Persons are joined in any such action or actions. Each Guarantor waives any right to require that any resort be had by Agent or any Lender to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of Agent or any Lender in favor of any Loan Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of Agent's right to proceed in any other form of action or proceeding or against any other Person unless Agent has expressed any such waiver in writing. Without limiting the generality of the foregoing, no action or proceeding by Agent against any Loan Party under any document evidencing or securing indebtedness of any Loan Party to Agent shall diminish the liability of any Guarantor hereunder, except to the extent Agent receives actual payment on account of Obligations by such action or proceeding,

notwithstanding the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Loan Party.

- (f) As an original and independent obligation under this Guaranty, each Guarantor shall (a) indemnify, defend and hold Agent harmless and each of the Lenders and keep Agent and each of the Lenders indemnified against all costs, losses, expenses and liabilities of whatever kind resulting from the failure by any Loan Party to make due and punctual payment of any of the Obligations or resulting from any of the Obligations being or becoming void, voidable, unenforceable or ineffective against any other Loan Party (including, but without limitation, all legal and other costs, charges and expenses incurred by Agent and each of the Lenders, or any of them in connection with preserving or enforcing, or attempting to preserve or enforce, its rights under this Guaranty), except to the extent that any of the same results from the gross negligence or willful misconduct by Agent or any Lender; and (b) pay on demand the amount of such costs, losses, expenses and liabilities whether or not Agent or any of the Lenders have attempted to enforce any rights against any Loan Party or any other Person or otherwise.
- (g) The liability of each Guarantor hereunder shall be absolute, unlimited (except the Personal Guarantor) and unconditional and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:
- (i) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any other Loan Document, including any increase in the Obligations resulting from the extension of additional credit to Borrower or otherwise;
  - (ii) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;
  - (iii) the failure of Agent or any Lender to assert any claim or demand or to enforce any right or remedy against any Loan Party or any other Person

under the provisions of this Agreement or any other Loan Document or any other document or instrument executed and delivered in connection herewith or therewith;

- (iv) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Loan Party to creditors of any Loan Party other than any other Loan Party;
  - (v) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Loan Party; and
  - (vi) any other agreements or circumstance of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty hereunder and/or the obligations of any Guarantor, or a defense to, or discharge of, any Loan Party or any other Person or party hereto or the Obligations or otherwise with respect to the Loans or any other financial accommodations to Borrower pursuant to this Agreement and/or the other Loan Documents.
- (h) Agent shall have the right to take any action set forth in any provision of this Agreement without notice to or the consent of any Guarantor and each Guarantor expressly waives any right to notice of, consent to, knowledge of and participation in any agreements relating to any such action or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above and waives any defenses of such Guarantor which might arise as a result of such actions.
- (i) Agent may at any time and from time to time (whether prior to or after the revocation or termination of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid.
- (j) The Guaranty provisions herein contained shall continue to be effective or be automatically reinstated, as the case may be, if a claim is ever made upon Agent or any Lender for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations and such Person repays all or part of said amount for any reason whatsoever, including, without limitation, by reason of any judgment, decree or order of any court or administrative body having jurisdiction over such Person or the respective property of each, or any settlement or compromise of any claim effected by such

Person with any such claimant (including any Loan Party); and in such event each Guarantor hereby agrees that any such judgment, decree, order, settlement or compromise or other circumstances shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to the Agent and/or the Lenders for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person(s).

- (k) Agent shall not be required to marshal any assets in favor of any Loan Party, or against or in payment of Obligations.
- (l) No Guarantor shall be entitled to claim against any present or future security held by Agent from any Person for Obligations in priority to or equally with any claim of Agent, or assert any claim for any liability of any Loan Party to any Guarantor in priority to or equally with claims of Agent for Obligations, and no Guarantor shall be entitled to compete with Agent with respect to, or to advance any equal or prior claim to any security held by Agent for Obligations.
- (m) If any Loan Party makes any payment to Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any Person under any federal, state, provincial or territorial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.
- (n) All present and future monies payable by any Loan Party to any other Loan Party, whether arising out of a right of subrogation, reimbursement, contribution, indemnification or otherwise, are assigned to the Agent, for the benefit of the Lenders as additional security for such Guarantor's liability to the Lenders hereunder and are postponed and subordinated to the Agent and Lenders' prior right to payment in full of Obligations. Except to the extent prohibited otherwise by this Agreement, all monies received by any Loan Party from any other Loan Party shall be held by such receiving Loan Party as agent and trustee for the Agent. This assignment, postponement and subordination shall only terminate when the Obligations are paid in full in cash (other than contingent obligations not then due and payable), all Commitments are irrevocably terminated and this Agreement is irrevocably terminated.
- (o) Each Loan Party acknowledges this assignment, postponement and subordination and, except as otherwise set forth herein, agrees to make no payments to any other Loan Party without the prior written consent of Agent. Each Loan Party agrees to give full effect to the provisions hereof.

- (p) Upon the occurrence and during the continuance of any Event of Default, Agent may and upon written request of the Required Lenders shall, without notice to or demand upon any Loan Party or any other Person, declare any obligations of each Guarantor hereunder immediately due and payable, and shall be entitled to enforce the obligations of each Guarantor. Upon such declaration by Agent, Agent and the Lenders are hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Agent or the Lenders to or for the credit or the account of any Guarantor against any and all of the obligations of each Guarantor now or hereafter existing hereunder, whether or not Agent or the Lenders shall have made any demand hereunder against any other Loan Party and although such obligations may be contingent and unmatured. The rights of Agent and the Lenders hereunder are in addition to other rights and remedies (including other rights of set-off) which Agent and the Lenders may have. Upon such declaration by Agent, with respect to any claims (other than those claims referred to in the immediately preceding paragraph) of any Guarantor against any other Loan Party (the "Claims"), Agent shall have the full right on the part of Agent in its own name or in the name of such Guarantor to collect and enforce such Claims by legal action, proof of debt in bankruptcy or other liquidation proceedings, vote in any proceeding for the arrangement of debts at any time proposed, or otherwise, Agent and each of its officers being hereby irrevocably constituted attorneys-in-fact for each Guarantor for the purpose of such enforcement and for the purpose of endorsing in the name of each Guarantor any instrument for the payment of money. Each Guarantor will receive as trustee for Agent and will pay to Agent forthwith upon receipt thereof any amounts which such Guarantor may receive from any Loan Party on account of the Claims. Each Guarantor agrees that at no time hereafter will any of the Claims be represented by any notes, other negotiable instruments or writings, except and in such event they shall either be made payable to Agent, or if payable to any Guarantor, shall forthwith be endorsed by such Guarantor to Agent. Each Guarantor agrees that no payment on account of the Claims or any security interest therein shall be created, received, accepted or retained during the continuance of any Event of Default nor shall any financing statement be filed with respect thereto by any Guarantor.
- (q) Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by any Loan Party or others with respect to any of the Obligations shall, if the statute of limitations in favor of any Guarantor against Agent or the Lenders shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.
- (r) All amounts due, owing and unpaid from time to time by any Guarantor hereunder shall bear interest at the interest rate per annum then chargeable with respect to the Loans.



- (s) Each Guarantor acknowledges receipt of a copy of each of this Agreement, the other Loan Documents and the Pre-Petition Loan Documents. Each Guarantor has made an independent investigation of the Loan Parties and of the financial condition of the Loan Parties. Neither Agent nor any Lender has made and neither Agent nor any Lender does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Loan Party, nor has Agent or any Lender made any representations or warranties as to the amount or nature of the Obligations of any Loan Party to which this Section applies as specifically herein set forth, nor has Agent or any Lender or any officer, agent or employee of Agent or any Lender or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.
- (t) The provisions of this Section shall remain in effect until the indefeasible payment in full in cash of all Obligations (other than contingent obligations not then due and payable), the termination of all Commitments and irrevocable termination of this Agreement.

**10.23 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event 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.

**10.24 Attachments.** The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

**10.25 Amendment and Restatement.**

- (a) Replacements. This Agreement supersedes and replaces all prior discussions and agreements (if any) describing the terms and conditions of any credit facilities established by the Agent and Lenders in favour of the Borrower hereunder and which is in addition to, and not in any way a replacement of, the J.S.N. Credit Agreement.
- (b) Existing Obligations. Each Loan Party hereby acknowledges, confirms and agrees that such Loan Party continues to be indebted to the Agent and Lenders for loans and advances made under the J.S.N. Credit Agreement, together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally

owing by Loan Parties to the Agent and Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever.

- (c) Acknowledgement of Security Interests and Reaffirmation. Each Loan Party hereby acknowledges, confirms and agrees that the Agent and Lenders have and shall continue to have a security interest in and Lien upon the property and assets granted to them pursuant to the security documents heretofore granted to them in connection with the J.S.N. Credit Agreement, including the Pre-Petition Loan Documents, which shall secure any and all of their "*Obligations*" thereunder and any and all of their Obligations hereunder, including in respect of any indemnities of the Loan Parties in respect of any indemnities provided by any of the "*Indemnities*" hereunder or thereunder, as well as any Lien against the Collateral of BM granted under the Initial Order (which shall only secure the DIP Obligations and shall not secure any Pre-Petition Liabilities) or under any Loan Documents or under any Pre-Petition Loan Documents or otherwise granted to or held by them. The Liens of the Agent and the Lender in the "*Collateral*" shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such Liens whether under the J.S.N. Credit Agreement, this Agreement, any other Loan Documents or any other Pre-Petition Loan Documents. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, no Pre-Petition Liabilities shall be secured by the DIP Charge. For greater certainty, to induce each Lender and Agent to enter into this Agreement, each of the undersigned hereby acknowledges and reaffirms its "*Obligations*" under each Pre-Petition Loan Document to which it is a party, including, without limitation, any grant, pledge or assignment of a Lien or security interest, as applicable, contained therein, in each case as amended, restated, supplemented or otherwise modified prior to or as of the date hereof (collectively, the "**Reaffirmed Documents**"). Effective upon the entry of the Initial Order, the Reaffirmed Documents and all financing statements, mortgages, collateral assignments, notices of lien, control agreements, all existing filings with any intellectual property office with respect to the recordation of an interest in the intellectual property of any of the Loan Parties which were filed by the Agent and all other similar documents, instruments or agreements granting, establishing or evidencing a Lien on the "*Collateral*" under any Pre-Petition Loan Document, shall each be deemed to be delivered and/or filed (other than any UK Pre-Petition Loan Documents) in connection with this Agreement, shall also constitute Loan Documents hereunder, shall secure all Obligations of the Loan Parties in respect of the DIP Obligations, and shall each remain in full force and effect without any further action by any of the Loan Parties and each of the Loan Parties hereby covenants, agrees and undertakes to execute and deliver any and all additional guarantees, agreements and ancillary documents required by the Agent to give full force and effect to all of the foregoing.


Furthermore, any reference to any of the Guarantors as a "*Borrower*", "*Debtor*", "*Obligor*" or other similar reference, under any of the Pre-Petition Loan Documents, shall include and be deemed to each of the Guarantors hereunder and their "*Obligations*" as a "*Guarantor*" hereunder and all such Pre-Petition Loan

Documents which secures their "*Obligations*" thereunder as a "*Borrower*" shall also secure all of their Obligations hereunder as a "*Guarantor*" and each Pre-Petition Loan Document shall be, and shall be deemed to be, hereby amended accordingly to give full force and effect to all of the above.


[2 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 date first above written.


Borrower:  
**BEN MOSS JEWELLERS WESTERN CANADA LTD.**

By:   
Name: Joseph Shilon  
Authorized Signing Officer


Guarantor:  
**J.S.N. JEWELLERY INC.**

By:   
Name: Joseph Shilon  
Authorized Signing Officer


Guarantor:  
**J.S.N. JEWELLERY UK LIMITED**

By:   
Name: Joseph Shilon  
Authorized Signing Officer

Guarantor:  
**GMJ CORP.**

By:   
Name: Joseph Shilon  
Authorized Signing Officer

Guarantor:  
**2373138 ONTARIO INC.**

By:   
Name: Joseph Shilon  
Authorized Signing Officer

Guarantor:  
**FOREVER JEWELLERY INC.**

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

Borrower:

**BEN MOSS JEWELLERS WESTERN CANADA LTD.**

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

Name:

Authorized Signing Officer

Guarantor:

**J.S.N. JEWELLERY INC.**

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

Name:

Authorized Signing Officer

Guarantor:

**J.S.N. JEWELLERY UK LIMITED**

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

Name:

Authorized Signing Officer

Guarantor:

**GMJ CORP.**

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

Name:

Authorized Signing Officer

Guarantor:

**2373138 ONTARIO INC.**

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

Name:

Authorized Signing Officer

Guarantor:

**FOREVER JEWELLERY INC.**

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

Name:

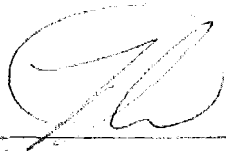
Authorized Signing Officer

Guarantor:  
**ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED**

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

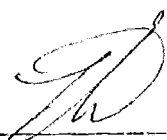
Guarantor:  
**P.M.R. INC.**

By: \_\_\_\_\_  
Name: *Joseph Shilon*  
Authorized Signing Officer



Witness Signature  
Print Name: HARVEY CHAITON  
Address: 5000 YONGE ST., 10<sup>th</sup> FLOOR  
TORONTO, ONTARIO  
M2N 7E9

Guarantor: \_\_\_\_\_  
**JOSEPH SHILON**



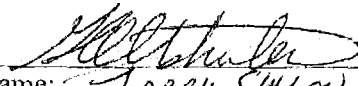
Administrative Agent and as Collateral Agent:  
**SALUS CAPITAL PARTNERS, LLC**

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

Lender:  
**SALUS CLO 2012-1, LTD.**

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

Guarantor:  
**ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED**

By:   
Name: Joseph Shilon  
Authorized Signing Officer

Guarantor:  
**P.M.R. INC.**

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

\_\_\_\_\_  
**Witness Signature**  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

) Guarantor:  
)  
)  
) \_\_\_\_\_  
) **JOSEPH SHILON**  
)  
)  
)  
)  
)

Administrative Agent and as Collateral Agent:  
**SALUS CAPITAL PARTNERS, LLC**

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

Lender:  
**SALUS CLO 2012-1, LTD.**

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

Guarantor:  
**ALWAYS AND FOREVER FAMILY COLLECTION INCORPORATED**


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

Guarantor:  
**P.M.R. INC.**


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

	)	Guarantor:
	)	
<b>Witness Signature</b>	)	<b>JOSEPH SHILON</b>
Print Name: _____	)	
Address: _____	)	
_____	)	
_____	)	
_____	)	

Administrative Agent and as Collateral Agent:  
**SALUS CAPITAL PARTNERS, LLC**

By:  \_\_\_\_\_  
Name: Kyle C. Shonak  
Authorized Signing Officer

Lender:  
**SALUS CLO 2012-1, LTD.**

By:  \_\_\_\_\_  
Name: Kyle C. Shonak  
Authorized Signing Officer



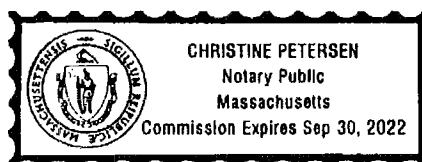
**TAB U**



Attached is Exhibit "U" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





ONTARIO PPSA SEARCH SUMMARY  
Personal Property Security Act (Ontario)

Search services provided by



**AIRD & BERLIS LLP**  
**J.S.N. JEWELLERY INC.**

1294829  
9  
07MAR2016  
06MAR2016

REQUESTOR  
BUSINESS DEBTOR  
TRANSACTION ID  
NUMBER OF LIEN(S)  
DATE SEARCHED  
FILE CURRENCY

**Collateral Classifications**  
Inventory  
Equipment

**Secured Parties**  
NATIONAL LEASING GROUP INC.

**Debtors**  
WHITPAY INC & J.S.N. JEWELLERY INC.

1. **File Number** 678324303  
**Type** PPSA - 06 yrs  
**Date Filed** 2012-05-11  
**Expiry Date** 2018-05-11  
**Registration #** 20120511 1446 6005 1484

**General Collateral**

ALL PORTABLE XRF ANALYZER KIT INCLUDING GOLDXPRT AND LENOVO E420 LAPTOP OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2581903 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

**Type** Amendment  
**Date Filed** 2012-05-11  
**Registration #** 20120511 1449 6005 1485

**Debtors**  
WHITPAY INC.  
J.S.N. JEWELLERY INC.

**Reference Debtors**  
WHITPAY INC & J.S.N. JEWELLERY INC.

**Reason**  
ADDING NAMES WHITPAY INC & J.S.N. JEWELLERY INC.

2. **File Number** 679388841  
**Type** PPSA - 06 yrs  
**Date Filed** 2012-06-22  
**Expiry Date** 2018-06-22  
**Registration #** 20120622 1059 6005 2199

**Debtors**  
WHITPAY INC.  
J.S.N. JEWELLERY INC.

**Secured Parties**  
NATIONAL LEASING GROUP INC.

**Collateral Classifications**  
Inventory

**General Collateral**

ALL PRECIOUS METALS ANALYZERS OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2587107 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

**Type** Amendment  
**Date Filed** 2012-07-20  
**Registration #** 20120720 0834 6005 2614

**Reference Debtors**  
WHITPAY INC.

**Collateral Classifications**  
Inventory  
Equipment



**Reason**  
ADDING INVENTORY REGISTRATION IS FOR EQUIPMENT AND INVENTORY

3. **File Number** 680035374  
**Type** PPSA - 06 yrs  
**Date Filed** 2012-07-18  
**Expiry Date** 2018-07-18  
**Registration #** 20120718 1506 6005 2588

**Debtors**  
WHITPAY INC.  
J.S.N. JEWELLERY INC.

**Secured Parties**  
NATIONAL LEASING GROUP INC.

**Collateral Classifications**  
Equipment

**General Collateral**

ALL ANALYZER KIT OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2582846 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

4. **File Number** 680061978  
**Type** PPSA - 06 yrs  
**Date Filed** 2012-07-19  
**Expiry Date** 2018-07-19  
**Registration #** 20120719 1458 6005 2599

**Debtors**  
WHITPAY INC.  
J.S.N. JEWELLERY INC.

**Secured Parties**  
NATIONAL LEASING GROUP INC.

**Collateral Classifications**  
Equipment

**General Collateral**

ALL PORTABLE ANALYZER KITS, GOLDPERT AND LENOVO LAPTOPS OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2582846 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

**Type** Amendment  
**Date Filed** 2012-07-20  
**Registration #** 20120720 0842 6005 2615

**Reference Debtors**  
WHITPAY INC.

**Collateral Classifications**  
Inventory  
Equipment

**Reason**  
ADDING INVENTORY REGISTRATION IS FOR EQUIPMENT AND INVENTORY

5. **File Number** 680068386  
**Type** PPSA - 06 yrs  
**Date Filed** 2012-07-19  
**Expiry Date** 2018-07-19  
**Registration #** 20120719 1501 6005 2600

**Debtors**  
WHITPAY INC.  
J.S.N. JEWELLERY INC.

**Secured Parties**  
NATIONAL LEASING GROUP INC.

**Collateral Classifications**  
Equipment

**General Collateral**

ALL PORTABLE ANALYZER KITS, GOLDPERT AND LENOVO LAPTOPS OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2581903 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

**Type** Amendment  
**Date Filed** 2012-07-20  
**Registration #** 20120720 0844 6005 2616

**Reference Debtors**  
WHITPAY INC.

**Collateral Classifications**  
Inventory  
Equipment

**Reason**  
ADDING INVENTORY REGISTRATION IS FOR EQUIPMENT AND INVENTORY





6. **File Number** 681585957 **Debtors** **Secured Parties** **Collateral Classifications**  
**Type** PPSA - 06 yrs WHITPAY INC. NATIONAL LEASING GROUP INC. Equipment  
**Date Filed** 2012-09-20 J.S.N. JEWELLERY INC.  
**Expiry Date** 2018-09-20  
**Registration #** 20120920 1233 6005 3515

**General Collateral**  
 ALL COMPUTER SYSTEMS & SOFTWARE OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2592540 BETWEEN THE SECURED PARTY, AS LESSOR AND THE DEBTOR AS LESSEE, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.

7. **File Number** 685393758 **Debtors** **Secured Parties** **Collateral Classifications**  
**Type** PPSA - 05 yrs J.S.N. JEWELLERY INC. HALTON AUTOLEASE INC. Consumer Goods  
**Date Filed** 2013-03-19  
**Expiry Date** 2018-03-19  
**Registration #** 20130319 1448 1562 6129  
 Motor Vehicle  
 Principal Amount \$104366  
 Date of Maturity 15MAR2018

**Serial Numbered Collateral**  
 2013, MERCEDES, GL550, 4JGDF7DE6DA 132609

**Type** Amendment **Debtors**  
**Date Filed** 2013-11-08 WHITPAY INC.  
**Registration #** 20131108 1438 1562 7192  
**Reference Debtors**  
 J.S.N. JEWELLERY INC

**Reason**  
 DEBTOR NAME CHANGE

8. **File Number** 688069278 **Debtors** **Secured Parties** **Collateral Classifications**  
**Type** PPSA - 5 yrs J.S.N. JEWELLERY INC. SALUS CAPITAL PARTNERS, LLC  
**Date Filed** 2013-06-25  
**Expiry Date** 2018-06-25  
**Registration #** 20130625 1552 1862 8420  
 Inventory  
 Equipment  
 Accounts  
 Other  
 Motor Vehicle

9. **File Number** 711005355 **Debtors** **Secured Parties** **Collateral Classifications**  
**Type** PPSA - 03 yrs J.S.N. JEWELLERY INC. THE ARGEN CORPORATION  
**Date Filed** 2015-10-20  
**Expiry Date** 2018-10-20  
**Registration #** 20151020 1242 1616 2611  
 Inventory  
 Equipment  
 Accounts  
 Other

**General Collateral**  
 ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY.



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\*\*\* END OF REPORT \*\*\*



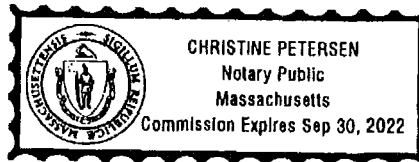
# TAB V



Attached is Exhibit "V" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public







## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT dated as of October 9<sup>TH</sup>, 2015 is made between THE ARGEN CORPORATION, 5855 Oberlin Drive, San Diego, California, U.S.A. (the "Junior Creditor") and SALUS CAPITAL PARTNERS, LLC, as Administrative Agent for and on behalf of itself and the other Senior Creditors (in that capacity, the "Agent").

For good and valuable consideration, the Junior Creditor and the Senior Creditor agree as follows:

1. **Definitions.** In this Agreement, the following terms have the meanings set out below unless the context requires otherwise:

"**Debtor**" means J.S.N. Jewellery Inc. and its affiliates (as that term is defined in the *Business Corporations Act (Ontario)*).

"**Enforcement Action**" means (a) the enforcement of any Junior Security or any action in furtherance thereof, (b) the appointment of a receiver or receiver and manager of the Debtor or any of its assets, (c) the commencement or initiation of any insolvency proceeding with respect to the Debtor, (d) the commencement or initiation of any action or proceeding against the Debtor to recover or receive payment of any of the Junior Debt, or (e) the exercise any right of set-off, combination, compensation or similar right against the Debtor.

"**Junior Debt**" means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description whatsoever and howsoever incurred (whether direct or indirect, absolute or contingent, matured or unmatured, whether as principal debtor, guarantor, surety or otherwise) of the Debtor to the Junior Creditor, including, without limitation, obligations incurred in connection with the sale of products by the Junior Creditor to the Debtor.

"**Junior Payment**" means, with respect to any Junior Debt, (a) any payment or distribution by any party of cash, securities, or other form of property, including by the exercise of a right of set-off or compensation or in any other manner, on account of such Junior Debt, or (b) any redemption, purchase or other acquisition of such Junior Debt by any party.

"**Junior Security**" means any security agreement (of any nature) granted by the Debtor to the Junior Creditor for all or any part of the Junior Debt.

"**Lien**" means any mortgage, charge, pledge, right of set-off, hypothecation, lien (statutory or otherwise), security interest or other encumbrance of any nature or kind howsoever arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any property that is prior to the right of any other creditor in respect of such property.

"**Senior Credit Agreement**" means the Credit Agreement among the Debtor, the Agent and the lenders party thereto, as amended, supplemented, restated or replaced from time to time.

"**Senior Creditors**" means the Agent and the lenders from time to time party to the Senior Credit Agreement.



**“Senior Debt”** means, collectively, all present and future indebtedness, liabilities and obligations of any and every kind, nature and description whatsoever and howsoever incurred (whether direct or indirect, absolute or contingent, matured or unmatured, whether as principal debtor, guarantor, surety or otherwise) of the Debtor to the Senior Creditors, including without limitation under the Senior Credit Agreement or any security documentation delivered by the Debtor to the Senior Creditors pursuant to the Senior Credit Agreement.

**“Senior Security”** means, collectively, all present and future guarantees and Liens granted by the Debtor or any of its subsidiaries or affiliated entities to the Senior Creditors as security for all or any part of the Senior Debt.

2. **Payment Restriction.** Notwithstanding the terms of the Junior Debt, neither the Debtor nor any other party on its behalf shall make or be entitled to make, and the Junior Creditor shall not accept and shall not be entitled to accept, any Junior Payment after being notified in writing by the Agent that an “event of default” has occurred under the Senior Credit Agreement. If the “event of default” under the Senior Credit Agreement is cured or waived, the Debtor will be entitled to resume the making of Junior Payments, and the Junior Creditor shall be entitled to accept such Junior Payments.

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

4. **Enforcement Action.** The Junior Creditor shall not take any Enforcement Action unless and until the Senior Debt is paid in full and the Senior Creditors have no obligation to extend further financing to the Debtor.

5. **Proceeds Held in Trust.** If any payment (including any proceeds of realization on the Junior Security) is made to or received by the Junior Creditor, the Junior Creditor shall hold such payment in trust for the Senior Creditors and shall forthwith pay such payment to the Agent on behalf of the Senior Creditors for application against the Senior Debt until the Senior Debt is paid in full.

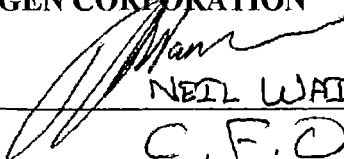
6. **Application of Agreement.** The rights of the Senior Creditors and the priorities of the Senior Security and the Senior Debt set out in this Agreement shall apply irrespective of any matter or thing.

7. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province and the Junior Creditor submits and attorns to the jurisdiction of the Courts of the Province of Ontario for the purposes of this Agreement.



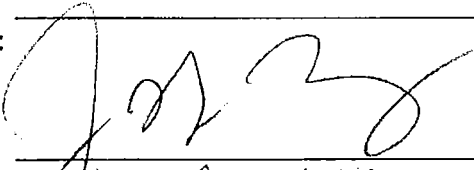
IN WITNESS WHEREOF the Junior Creditor and the Senior Creditor have executed this Agreement.

**THE ARGEN CORPORATION**

By:   
Name: NEIL WAINSTEIN  
Title: C.F.O

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

**SALUS CAPITAL PARTNERS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
By:   
Name: Dawn A.C. McCoy  
Title: Senior Vice President



**TAB W**





Attached is Exhibit "W" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 135  
RUN DATE : 2016/05/14  
ID : 20160514151239.86

REPORT : PSSR060  
PAGE : 1  
( 12)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

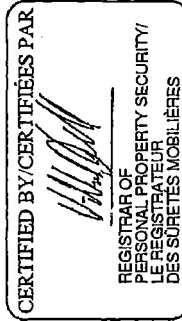
SEARCH CONDUCTED ON : P.M.R. INC.

FILE CURRENCY : 13MAY 2016

ENQUIRY NUMBER 20160514151239.86 CONTAINS 4 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP  
ATTN: SHANNON MORRIS  
HOLD FOR PICK UP  
TORONTO ON M5J2T9



CONTINUED... 2





RUN NUMBER : 135  
RUN DATE : 2016/05/14  
ID : 20160514151239.86

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 13)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : P.M.R. INC.  
FILE CURRENCY : 13MAY 2016

FORM TO FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
716649246

01 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

02 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

03 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

04 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

05 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

06 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

07 DEBTOR NAME : P.M.R. INC.  
BUSINESS NAME : P.M.R. INC.  
ADDRESS : 64 JARDIN AVENUE, UNIT 7  
CONCORD  
ONTARIO CORPORATION NO. : L4K3P3

08 SECURED PARTY /  
LIEN CLAIMANT : SALUS CAPITAL PARTNERS, LLC, AS AGENT  
ADDRESS : 197 FIRST AVENUE, SUITE 250  
NEEDHAM MA 02494

09 SECURED PARTY /  
LIEN CLAIMANT : SALUS CAPITAL PARTNERS, LLC, AS AGENT  
ADDRESS : 197 FIRST AVENUE, SUITE 250  
NEEDHAM MA 02494

10 MOTOR VEHICLE :  
YEAR MAKE :  
MODEL :  
VIN :  
GENERAL DESCRIPTION :  
REGISTRATION AGENT : AIRD & BERLIS LLP  
ADDRESS : 181 BAY STREET, SUITE 1800  
TORONTO ON M5J2T9

CERTIFIED BY / CERTIFIÉES PAR  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY /  
LE REGISTRATEUR  
DES SURETES MOBILIERES  
(e/f) (s 09/2013)



\*\*\* FOR FURTHER INFORMATION CONTACT THE SECURED PARTY \*\*\*  
CONTINUED... 3



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 135  
RUN DATE : 2016/05/14  
ID : 20160514151239.86

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : P.M.R. INC.  
FILE CURRENCY : 13MAY 2016

FORM I.C. FINANCING STATEMENT / CLAIM FOR LEASE

FILE NUMBER : 686073573

00 DEBTOR NAME : P.M.R. INC.  
01 PILING AC. OF PAGES : 001 001  
02 DEBTOR NAME : P.M.R. INC.  
03 BUSINESS NAME : P.M.R. INC.  
04 ADDRESS : 64 JARDIN DRIVE, UNIT 7 VAUGHAN ONTARIO CORPORATION NO. L4K 3P3  
05 DEBTOR NAME : P.M.R. INC.  
06 BUSINESS NAME : P.M.R. INC.  
07 ADDRESS : PACE SAVINGS & CREDIT UNION LIMITED  
08 SECURED PARTY / CREDIT UNION : PACE SAVINGS & CREDIT UNION LIMITED  
09 ADDRESS : 8111 JANE STREET, UNIT 1 VAUGHAN ONTARIO CORPORATION NO. L4K 4L7

01 DEBTOR NAME : P.M.R. INC.  
02 BUSINESS NAME : P.M.R. INC.  
03 ADDRESS : 64 JARDIN DRIVE, UNIT 7 VAUGHAN ONTARIO CORPORATION NO. L4K 3P3

04 DEBTOR NAME : P.M.R. INC.  
05 BUSINESS NAME : P.M.R. INC.  
06 ADDRESS : 64 JARDIN DRIVE, UNIT 7 VAUGHAN ONTARIO CORPORATION NO. L4K 3P3

07 DEBTOR NAME : P.M.R. INC.  
08 BUSINESS NAME : P.M.R. INC.  
09 ADDRESS : 64 JARDIN DRIVE, UNIT 7 VAUGHAN ONTARIO CORPORATION NO. L4K 3P3

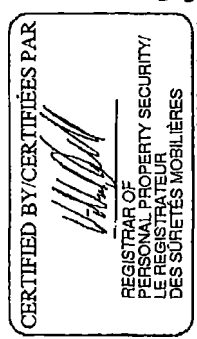
08 SECURED PARTY / CREDIT UNION : PACE SAVINGS & CREDIT UNION LIMITED  
09 ADDRESS : 8111 JANE STREET, UNIT 1 VAUGHAN ONTARIO CORPORATION NO. L4K 4L7

11 MOTOR VEHICLE :  
12 YEAR MAKE :  
13 GENERAL COLLATERAL DESCRIPTION :  
14 REGISTERING AGENT :  
15 REGISTERING AGENT :  
16 REGISTERING AGENT :  
17 REGISTERING AGENT :

11 MOTOR VEHICLE :  
12 YEAR MAKE :  
13 GENERAL COLLATERAL DESCRIPTION :  
14 REGISTERING AGENT :  
15 REGISTERING AGENT :  
16 REGISTERING AGENT :  
17 REGISTERING AGENT :

11 MOTOR VEHICLE :  
12 YEAR MAKE :  
13 GENERAL COLLATERAL DESCRIPTION :  
14 REGISTERING AGENT :  
15 REGISTERING AGENT :  
16 REGISTERING AGENT :  
17 REGISTERING AGENT :

11 MOTOR VEHICLE :  
12 YEAR MAKE :  
13 GENERAL COLLATERAL DESCRIPTION :  
14 REGISTERING AGENT :  
15 REGISTERING AGENT :  
16 REGISTERING AGENT :  
17 REGISTERING AGENT :



CONTINUED... 4





RUN NUMBER : 135  
RUN DATE : 2016/05/14  
ID : 20160514151239.86

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

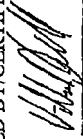
REPORT : PSSR060  
PAGE : 4  
( 15 )

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : P.M.R. INC.  
FILE CURRENCY : 13MAY 2016

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
716649246	20160513	1324	1793 3901
686073573	20130415	1344	1862 3234

2 REGISTRATIONS(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTREUR  
DES SURETÉS MOBILIÈRES  
(en/3 09/2013)



702  
Ontario



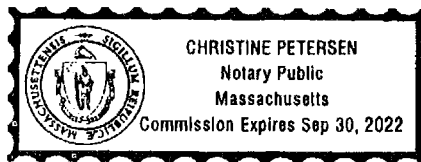
**TAB X**



Attached is Exhibit "X" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





# PACE CREDIT UNION Well beyond a bank.

## LINE OF CREDIT STATEMENT

G.A.J.S. HOLDINGS INC.  
Apt. 7, 64 JARDIN DRIVE  
CONCORD, ON L4K 3P3

Date:  
June 24, 2016

Account Number:  
39503

These figures are based on the account activity as of today's date and will change with any subsequent transactions. The balance must be verified on the day of closing. Payment received after 1:00 PM shall be deemed for the purpose of calculation of interest, as the next business day.

Summary Of Charges - As At June 24 2016	
Description	Amount
Line Of Credit Limit	\$6,450,000.00
Future Payment Due	\$ 0.00
Past Due (Information Only)	\$ 0.00
Current Balance (Provided No Further Activity)	\$-6,406,888.81
Interest Due @ 4.50 % to June 23, 2016	\$-18,114.68
Over Draft Interest @ 30.00 % to June 23, 2016	\$ 0.00
<b>Total Charges</b>	<b>\$-6,425,003.49</b>

If you have any questions, please feel free to contact the below.

Lorraine Hensberger, Commercial Credit Manager  
8111 Jane St. Unit 1 & 2  
Vaughan, ON L4K4L7  
Phone: 9057388900  
Fax: 9057388283  
Email:






**GUARANTEE AND POSTPONEMENT OF CLAIM**

**TO: PACE SAVINGS & CREDIT UNION LIMITED** (hereinafter called the Credit Union)

For Valuable Consideration **P.M.R. INC.** (hereinafter called the "Guarantor") hereby guarantees payment of the liabilities of **G.A.J.S. HOLDINGS** (hereinafter referred to as the "Member") to the Credit Union and agrees to the following terms and conditions:

1. The liability of the Guarantor hereunder shall be limited to the sum of **\$6,500,000.00 (SIX MILLION FIVE HUNDRED THOUSAND DOLLARS)** and shall bear interest from the date of demand for payment as hereinafter provided.
2. If more than one Guarantor executes this instrument the provisions hereof shall be read with all necessary grammatical changes, each reference to the Guarantor shall include each and every one of the undersigned severally and this Guarantee and all covenants and agreements herein contained shall be deemed to be joint and several.
3. The Credit Union may grant extensions of time or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Member, with other parties and with securities as the Credit Union may see fit. The Credit Union may apply all moneys received from the Member or others, or from securities, upon such part of the Member's liability as it may think best, without prejudice to and without in any way limiting or lessening the liability of the Guarantor under this Guarantee.
4. Neither the failure of the Credit Union to take any security that the parties hereto contemplated it would take nor the failure of the Credit Union to perfect any security taken shall prejudice, or in any way limit or lessen the liability of the Guarantor under, this Guarantee.
5. No loss of or in respect of securities received by the Credit Union from the Member or any other person, whether occasioned through the fault of the Credit Union or otherwise, shall discharge pro tanto, limit or lessen the liability of the Guarantor under this Guarantee.
6. This Guarantee shall be binding on the Guarantor as a continuing guarantee and shall cover any present liabilities of the Member to the Credit Union, all liabilities incurred after the date hereof whether from dealings between the Credit Union and the Member or from any other dealings by which the Member may become in any manner whatever liable to the Credit Union and any ultimate balance due or remaining due to the Credit Union. The Guarantor, or the executors, administrators or successors of the Guarantor, may determine further liability under this Guarantee by written notice to the Credit Union; and this Guarantee shall not apply to any liabilities of the Member to the Credit Union incurred after the expiration of thirty days from the date of receipt of such notice by the Credit Union.
7. Any change in the name of the Member, or any change in the membership of the Member's firm, shall not affect or in any way limit or lessen the liability of the Guarantor hereunder. This Guarantee shall also extend to any person, firm or corporation acquiring or from time to time carrying on the business of the Member.
8. All moneys, advances, renewals and credits in fact borrowed or obtained from the Credit Union shall be deemed to form part of the liabilities hereby guaranteed notwithstanding any incapacity, disability or lack of limitation of status or of power of the Member or of the directors, partners or agents thereof, notwithstanding that the Member may not be a legal entity, and notwithstanding any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits. Any amount which may not be recoverable from the Guarantor on the basis of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Credit Union after demand therefore as hereinafter provided.
9. Any account settled or stated by or between the Credit Union and the Member shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Member to the Credit Union is so due.
10. Should the Credit Union receive from the Guarantor any payment or payments, either in full or on account of the liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Member or the Member's estate until the Credit Union's claims against the Member have been paid in full. In case of any liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the case of any composition with creditors or scheme of arrangement, the Credit Union shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue liable up to the amount guaranteed, less any payments made the Guarantor, for any balance which may be owing to the Credit Union by the Member. In the event of the valuation by the Credit Union of any of its securities and/or the retention thereof by the Credit Union, such valuation and/or retention shall not, as between the Credit Union and the Guarantor, be considered as a purchase of such securities, or as payment, satisfaction or reduction of the Member's liabilities to the Credit Union, or any part thereof.
11. The Guarantor shall make payment to the Credit Union of the amount of the liability of the Member forthwith after demand therefore is made in writing. Such demand shall be deemed to have been made when an envelope containing the demand and addressed to the Guarantor at the last address of the Guarantor known to the Credit Union is deposited, postage prepaid and registered, in the Post Office. The liability of the Guarantor shall bear interest from the date of such demand at the rate or rates then applicable to the liabilities of the Member to the Credit Union.

Borrower's  
Initials  




12. For the further security of the Credit Union the Guarantor agrees that:

- a) Any debts and claims against the Member now or at any time hereafter held by the Guarantor are and shall be held by the Guarantor for the further security of the Credit Union, and as between the Guarantor and the Credit Union are hereby postponed to the debts and claims against the Member now or at any time hereafter held by the Credit Union. Any such debts and claims of the Guarantor shall be held in trust for the Credit Union, shall be collected, enforced or proved subject to and for the purposes of this agreement and any moneys received by the Guarantor in respect thereof shall be paid over to the Credit Union on account of the Credit Union's debts and claims. No such debt or claim of the Guarantor against the Member shall be released or withdrawn by the Guarantor unless the Credit Union's written consent to such release or withdrawal is first obtained. The Guarantor shall not permit the prescription of any such debt or claim by any statute of limitations, assign any such debt or claim to any person other than the Credit Union, or ask for or obtain any security, negotiable paper or other evidence of any such debt or claim except for the purpose of delivering the same to the Credit Union. The Credit Union may at any time give notice to the Member requiring the Member to pay to the Credit Union all or any of such debts or claims of the Guarantor against the Member, and in such event such debts and claims are hereby assigned and transferred to the Credit Union. In the event of the liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the event of any composition with creditors or scheme of arrangement, any and all dividends or other moneys which may be due or payable to the Guarantor in respect of the debts or claims of the Guarantor against the Member are hereby assigned and transferred to and shall be due and be paid to the Credit Union and for such payment to the Credit Union this shall be a sufficient warrant and authority to any person making the same. The Guarantor shall, at any time and from time to time at the request of and as required by the Credit Union, make, execute and deliver all statements of claims, proofs of claim, assignments and other documents and do all matters and things which may be necessary or advisable for the protection of the rights of the Credit Union under and by virtue of this instrument.
- b) The provisions of this clause are independent of and severable from the provisions of clauses 1-11 of this Guarantee and Postponement of Claim and shall remain in force whether or not the Guarantor is liable for any amount under clauses 1-11 and whether or not the Credit Union has received the notice referred to in paragraph 6. The provisions of this clause may, however, be terminated by the Guarantor, by written notice given to the Credit Union at any time when the Guarantor is not liable for any amount under clauses 1-11 by reason of the fact that the Member is not indebted or liable to the Credit Union.

13. The Credit Union shall not be bound to exhaust its recourse against the Member, other parties or the securities it may hold before being entitled to payment from the Guarantor under this Guarantee.

14. This Guarantee is given in addition to and without prejudice to any securities of any kind, including any guarantees and postponement agreements, whether or not in the same form as this instrument, now or hereafter held by the Credit Union.

15. There are no representations, collateral agreements or conditions with respect to this instrument, or affecting the Guarantor's liability hereunder, other than those contained here.

16. The terms and conditions set out in this Guarantee shall not merge with any judgment which may be obtained against the Guarantor or the Member.

17. This instrument shall be construed in accordance with the laws of the Province of Ontario. The Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this instrument may be instituted in the courts of Ontario, and the Guarantor hereby agrees to accept and submit to the jurisdiction of the said courts, to acknowledge their competence, and to be bound by any judgment thereof. Nothing herein shall limit the Credit Union's right to bring proceedings against the Guarantor elsewhere.

18. This Guarantee and Postponement of Claim shall extend to and enure to the benefit of the successors and assigns of the Credit Union, and shall be binding upon the Guarantor and the heirs, executors, and administrators or the successors and assigns of the Guarantor.

Signed, Sealed and Delivered this 29 day of April, 2013

To be completed by individuals, partners or sole proprietors

Signature of Witness

Signature of Guarantor

Signature of Witness

Signature of Guarantor

P.M.R. INC

Corporate Name and Trade Style of Guarantor

Per: Authorized Signing Official Title President

Per: Authorized Signing Official Title



**GUARANTEE AND POSTPONEMENT OF CLAIM**

**TO: PACE SAVINGS & CREDIT UNION LIMITED** (hereinafter called the Credit Union)

For Valuable Consideration **P.M.R. INC.** (hereinafter called the "Guarantor") hereby guarantees payment of the liabilities of **G.A.J.S. HOLDINGS** (hereinafter referred to as the "Member") to the Credit Union and agrees to the following terms and conditions:

1. The liability of the Guarantor hereunder shall be limited to the sum of **\$6,500,000.00 (SIX MILLION FIVE HUNDRED THOUSAND DOLLARS)** and shall bear interest from the date of demand for payment as hereinafter provided.

2. If more than one Guarantor executes this instrument the provisions hereof shall be read with all necessary grammatical changes, each reference to the Guarantor shall include each and every one of the undersigned severally and this Guarantee and all covenants and agreements herein contained shall be deemed to be joint and several.

3. The Credit Union may grant extensions of time or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Member, with other parties and with securities as the Credit Union may see fit. The Credit Union may apply all moneys received from the Member or others, or from securities, upon such part of the Member's liability as it may think best, without prejudice to and without in any way limiting or lessening the liability of the Guarantor under this Guarantee.

4. Neither the failure of the Credit Union to take any security that the parties hereto contemplated it would take nor the failure of the Credit Union to perfect any security taken shall prejudice, or in any way limit or lessen the liability of the Guarantor under, this Guarantee.

5. No loss of or in respect of securities received by the Credit Union from the Member or any other person, whether occasioned through the fault of the Credit Union or otherwise, shall discharge pro tanto, limit or lessen the liability of the Guarantor under this Guarantee.

6. This Guarantee shall be binding on the Guarantor as a continuing guarantee and shall cover any present liabilities of the Member to the Credit Union, all liabilities incurred after the date hereof whether from dealings between the Credit Union and the Member or from any other dealings by which the Member may become in any manner whatever liable to the Credit Union and any ultimate balance due or remaining due to the Credit Union. The Guarantor, or the executors, administrators or successors of the Guarantor, may determine further liability under this Guarantee by written notice to the Credit Union; and this Guarantee shall not apply to any liabilities of the Member to the Credit Union incurred after the expiration of thirty days from the date of receipt of such notice by the Credit Union.

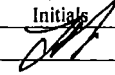
7. Any change in the name of the Member, or any change in the membership of the Member's firm, shall not affect or in any way limit or lessen the liability of the Guarantor hereunder. This Guarantee shall also extend to any person, firm or corporation acquiring or from time to time carrying on the business of the Member.

8. All moneys, advances, renewals and credits in fact borrowed or obtained from the Credit Union shall be deemed to form part of the liabilities hereby guaranteed notwithstanding any incapacity, disability or lack or limitation of status or of power of the Member or of the directors, partners or agents thereof, notwithstanding that the Member may not be a legal entity, and notwithstanding any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits. Any amount which may not be recoverable from the Guarantor on the basis of a guarantee shall be recoverable from the Guarantor as principal debtor in respect thereof and shall be paid to the Credit Union after demand therefore as hereinafter provided.

9. Any account settled or stated by or between the Credit Union and the Member shall be accepted by the Guarantor as conclusive evidence that the balance or amount thereby appearing due by the Member to the Credit Union is so due.

10. Should the Credit Union receive from the Guarantor any payment or payments, either in full or on account of the liability under this Guarantee, the Guarantor shall not be entitled to claim repayment against the Member or the Member's estate until the Credit Union's claims against the Member have been paid in full. In case of any liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the case of any composition with creditors or scheme of arrangement, the Credit Union shall have the right to rank for its full claim and receive all dividends or other payments in respect thereof until its claim has been paid in full and the Guarantor shall continue liable up to the amount guaranteed, less any payments made the Guarantor, for any balance which may be owing to the Credit Union by the Member. In the event of the valuation by the Credit Union of any of its securities and/or the retention thereof by the Credit Union, such valuation and/or retention shall not, as between the Credit Union and the Guarantor, be considered as a purchase of such securities, or as payment, satisfaction or reduction of the Member's liabilities to the Credit Union, or any part thereof.

11. The Guarantor shall make payment to the Credit Union of the amount of the liability of the Member forthwith after demand therefore is made in writing. Such demand shall be deemed to have been made when an envelope containing the demand and addressed to the Guarantor at the last address of the Guarantor known to the Credit Union is deposited, postage prepaid and registered, in the Post Office. The liability of the Guarantor shall bear interest from the date of such demand at the rate or rates then applicable to the liabilities of the Member to the Credit Union.

Borrower's  
Initials  




12. For the further security of the Credit Union the Guarantor agrees that:

- a) Any debts and claims against the Member now or at any time hereafter held by the Guarantor are and shall be held by the Guarantor for the further security of the Credit Union, and as between the Guarantor and the Credit Union are hereby postponed to the debts and claims against the Member now or at any time hereafter held by the Credit Union. Any such debts and claims of the Guarantor shall be held in trust for the Credit Union, shall be collected, enforced or proved subject to and for the purposes of this agreement and any moneys received by the Guarantor in respect thereof shall be paid over to the Credit Union on account of the Credit Union's debts and claims. No such debt or claim of the Guarantor against the Member shall be released or withdrawn by the Guarantor unless the Credit Union's written consent to such release or withdrawal is first obtained. The Guarantor shall not permit the prescription of any such debt or claim by any statute of limitations, assign any such debt or claim to any person other than the Credit Union, or ask for or obtain any security, negotiable paper or other evidence of any such debt or claim except for the purpose of delivering the same to the Credit Union. The Credit Union may at any time give notice to the Member requiring the Member to pay to the Credit Union all or any of such debts or claims of the Guarantor against the Member, and in such event such debts and claims are hereby assigned and transferred to the Credit Union. In the event of the liquidation, winding up or bankruptcy of the Member, or in the event that the Member shall make a sale of any of the Member's assets within the bulk transfer provisions of any applicable legislation, or in the event of any composition with creditors or scheme of arrangement, any and all dividends or other moneys which may be due or payable to the Guarantor in respect of the debts or claims of the Guarantor against the Member are hereby assigned and transferred to and shall be due and be paid to the Credit Union and for such payment to the Credit Union this shall be a sufficient warrant and authority to any person making the same. The Guarantor shall, at any time and from time to time at the request of and as required by the Credit Union, make, execute and deliver all statements of claims, proofs of claim, assignments and other documents and do all matters and things which may be necessary or advisable for the protection of the rights of the Credit Union under and by virtue of this instrument.
- b) The provisions of this clause are independent of and severable from the provisions of clauses 1-11 of this Guarantee and Postponement of Claim and shall remain in force whether or not the Guarantor is liable for any amount under clauses 1-11 and whether or not the Credit Union has received the notice referred to in paragraph 6. The provisions of this clause may, however, be terminated by the Guarantor, by written notice given to the Credit Union at any time when the Guarantor is not liable for any amount under clauses 1-11 by reason of the fact that the Member is not indebted or liable to the Credit Union.

13. The Credit Union shall not be bound to exhaust its recourse against the Member, other parties or the securities it may hold before being entitled to payment from the Guarantor under this Guarantee.

14. This Guarantee is given in addition to and without prejudice to any securities of any kind, including any guarantees and postponement agreements, whether or not in the same form as this instrument, now or hereafter held by the Credit Union.

15. There are no representations, collateral agreements or conditions with respect to this instrument, or affecting the Guarantor's liability hereunder, other than those contained here.

16. The terms and conditions set out in this Guarantee shall not merge with any judgment which may be obtained against the Guarantor or the Member.

17. This instrument shall be construed in accordance with the laws of the Province of Ontario. The Guarantor agrees that any legal suit, action or proceeding arising out of or relating to this instrument may be instituted in the courts of Ontario, and the Guarantor hereby agrees to accept and submit to the jurisdiction of the said courts, to acknowledge their competence, and to be bound by any judgment thereof. Nothing herein shall limit the Credit Union's right to bring proceedings against the Guarantor elsewhere.

18. This Guarantee and Postponement of Claim shall extend to and enure to the benefit of the successors and assigns of the Credit Union, and shall be binding upon the Guarantor and the heirs, executors, and administrators or the successors and assigns of the Guarantor.

Signed, Sealed and Delivered this 29 day of April, 2013

To be completed by individuals, partners or sole proprietors

Signature of Witness

Signature of Guarantor

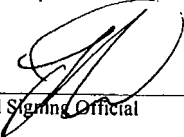
Signature of Witness

Signature of Guarantor

P.M.R. INC

Corporate Name and Trade Style of Guarantor

Per:

  
Authorized Signing Official

Title President

Per:

Authorized Signing Official

Title





**BUSINESS LOAN GENERAL SECURITY AGREEMENT**

**TO: PACE SAVINGS & CREDIT UNION LIMITED** (hereinafter called the "Credit Union")

**FROM:**

\_\_\_\_\_  
(First Name) Middle Initial Last Name  
**P.M.R. INC.**

\_\_\_\_\_  
or (Full Corporate Name and Business Name) (hereinafter called the "Debtor")

**446 FAIRLAWN AVENUE, TORONTO, ONTARIO M5M 1V1**

\_\_\_\_\_  
(address)

**1. DEFINITIONS**

In this Agreement,

- (a) "Collateral" means all personal property of any nature whatsoever, both tangible and intangible including, among other things, Inventory, Equipment, Receivables, Accounting Books of Record, Chattel Paper, Goods, Documents of Title, Instruments, Intangibles, Money, Securities and any Accessions thereto now owned or hereafter acquired by or on behalf of the Debtor or in respect of which the Debtor now or hereafter has any right, title or interest, except Consumer Goods, and any reference to "Collateral" shall be deemed to be a reference to "Collateral or any part thereof" except where otherwise specifically provided;
- (b) "Obligation" means all of the obligations, liabilities and indebtedness of the Debtor to the Credit Union from time to time, whether present or future, absolute or contingent, liquidated or unliquidated, of whatsoever nature or kind, in any currency or otherwise, including all Obligations, liabilities and indebtedness hereunder;
- (c) "PPSA" means the Personal Property Security Act, 1989 (Ontario), and any Act that may be substituted therefore, as from time to time amended;
- (d) "Proceeds" means any identifiable or traceable personal property in any form derived directly or indirectly from any dealing with property or proceeds therefrom, and includes any payment representing indemnity or compensation for loss or damage to the property or proceeds therefrom;
- (e) "Accessions", "Account", "Chattel Paper", "Document of Title", "Equipment", "Goods", "Instrument", "Intangible", "Inventory", "Securities", "Money" have the respective meanings given to them in PPSA.

**2. SECURITY INTEREST**

As security for the payment, performance and satisfaction of the Obligations to the Credit Union, the Debtor hereby grants to the Credit Union by way of security interest, mortgage, pledge, charge, assignment and hypothec a continuing security interest of the Debtor in the Collateral (including all renewals, accretions and substitutions therefore) and all Proceeds of the foregoing.

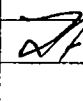
**3. REPRESENTATIONS AND WARRANTIES**

The Debtor hereby represents and warrants to the Credit Union that:

- (a) it has the power and capacity to own its properties and assets and to carry on its business as presently carried on by it;
- (b) it has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement;
- (c) except for the security interest granted hereby, the Debtor or any one or more of them is (and as to Collateral to be acquired after the date hereof, shall be) the owner of the Collateral free and clear of all liens, charges, claims, encumbrances, taxes or assessments.

**4. COVENANTS**

- (a) The Debtor will not sell, offer to sell, transfer, pledge or mortgage the Collateral, nor will the Debtor suffer to exist any other security interest in the Collateral in favour of any person other than the Credit Union, without the prior written consent of the Credit Union. All proceeds of sales shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union.
- (b) The Debtor shall, during the currency of this Agreement, insure and keep insured the Collateral to its full insurable value for fire, theft, and such other risks as the Credit Union may reasonably require, and will, at the request of the Credit Union, pay such further premium as is necessary to obtain an endorsement that the security interest of the Credit Union will not be invalidated by any breach of statutory condition. The proceeds in any insurance held pursuant to this paragraph shall be payable to the Credit Union and any proceeds of such insurance shall, at the option of the Credit Union, be applied to the replacement of the Collateral or towards repayment of any indebtedness of the Debtor or any one or more of them to the Credit Union. Should the Debtor neglect to maintain such Insurance the Credit Union may insure, and any premiums paid by the Credit Union together with interest thereon shall be payable by the Debtor to the Credit Union upon demand. The Debtor will deposit a certified copy of such insurance with the Credit Union on request, or obtain an insurance endorsement in favour of the Credit Union.

Initials  




**BUSINESS LOAN GENERAL SECURITY AGREEMENT**

- (c) The Debtor shall provide from time to time upon request fro the Credit Union, written information relating to the Collateral or any part thereof, and the Credit Union shall be entitled from time to time to inspect the tangible collateral including, without limitation, the books and records of the Debtor wherever located. For such purpose the Credit Union shall be access to all places where the Collateral or any part thereof is located and to all premises occupied by the Debtor.
- (d) The Debtor shall carry on and conduct its business in a proper and efficient manner and so as to protect and preserve the Collateral and shall keep, in accordance with generally accepted accounting principles, consistently applied, proper books of account for its business and accurate and complete records concerning Collateral, and shall mark any and all such records and Collateral at the Credit Union's request so as to indicate the existence of the security interest.
- (e) The Debtor shall pay all taxes, rates, levies, assessments and other charges of every kind which may be lawfully levied, assessed or imposed against or in respect of it or Collateral as and when the same become due and payable.
- (f) The Debtor shall notify the Credit Union promptly of:
  - (i) any change in the information contained in this Agreement relating to it, its business or the Collateral;
  - (ii) the details of any significant acquisition of Collateral;
  - (iii) the details of any claims or litigation affecting it or the collateral;
  - (iv) any loss of or damage to the Collateral.
- (g) The debtor shall not change its name without giving prior written notice to the Credit Union of the new name and the date upon which such change of name is to take effect.
- (h) The Debtor shall do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things as may be reasonable requested by the Credit Union or with respect to Collateral in order to give effect to this Agreement.
- (i) The Debtor shall not maintain accounts at any other financial institution without the consent of the Credit Union.
- (j) The Debtor may at any time, without the consent of the Credit Union:
  - (i) sell, assign, transfer, exchange, lease, consign or otherwise dispose of inventory in the ordinary course of its business;
  - (ii) sell or otherwise dispose of such part of its equipment which is no linger necessary or useful in connection with its business or which has become worn out or obsolete or unsuitable for the purpose for which hit was intended; and
  - (iii) collect accounts in the ordinary course of its business.

**5. EVENTS OF DEFAULT**


Any or all of the Obligations to the Credit Union shall, at the option of the Credit Union and notwithstanding any time or credit allowed by any instrument evidencing a liability, be immediately due and payable without notice or demand upon the occurrence of any of the following events (hereinafter referred to as "Events(s) of Default"):

- (a) Default in the payment or performance when due or payable of all or any of the Obligations, or of any endorser, guarantor, or surety for any liability of the Debtor or any one or more of them to the Credit Union;
- (b) Default by the debtor in the performance of any of its agreements in this Agreement;
- (c) Proof that any warranty, representation or statement made by the Debtor or furnished to the Credit Union herein, or in the application for any loan, was false in any material respect when made or furnished;
- (d) Any loss, theft, damage or destruction of Collateral or of any part of it, or the making of any levy, seizure or attachment thereto or the appointment of a receiver or any part thereof;
- (e) If the Credit Union should at any time deem itself insecure, bearing in mind the extent of the Obligations secured hereby, the value of the Collateral and any other relevant considerations;
- (f) The death, dissolution, termination of existence, insolvency, business failure, or commencement of any proceedings under any law relating to bankruptcy, insolvency, reorganization or compromise of debts affecting the Debtor or any one or more of them.

**6. REMEDIES**

Upon any Event of Default and at anytime thereafter the Credit Union, at its option, may declare that all indebtedness and Obligations secured by this agreement shall immediately become due and payable, and;

- (a) The Credit Union shall then have all rights and remedies of a secured party under the PPSA.

Initials




**BUSINESS LOAN GENERAL SECURITY AGREEMENT**

- (b) The Credit Union shall then be constituted to appoint in writing any person to be a receiver (which term shall include a receiver and a manager) of the Collateral, including any rents and profits thereof, and many remove any receiver and appoint another in his stead. Such receiver so appointed shall have power to take possession of the Collateral and to carry on or concur in carrying on the business of the Debtor, and to sell or concur in selling the Collateral or any part thereof. Any such receiver shall for all purposes be deemed to be the agent of the Debtor. The Credit Union may from time to time fix the remuneration of such receiver. All moneys from time to time received by such a receiver shall be paid by him first in discharge of all rents, taxes, rates, insurance premiums and outgoings affecting the Collateral, secondly in payment of his remuneration as receiver, thirdly in keeping in good standing any liens and charges on the Collateral prior to the security constituted by this Agreement, and fourthly in or toward payment of such parts of the indebtedness and liability of the Debtor to the Credit Union as to the Credit Union seems best, and any residue of such moneys so received shall be paid to the Debtor. The Credit Union is appointing or refraining from appointing such receiver shall not incur any liability to the receiver, the Debtor or otherwise.
- (c) The Credit Union may then collect, realize, sell or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions at such time or times, and without notice to the Debtor, as may seem to it advisable. The Credit Union shall not be liable or accountable for any failure to collect, realize, sell or obtain payment of the Collateral or any part thereof, and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving any rights of the Credit Union, the Debtor or any other person, firm or corporation in respect of the same. All moneys collected or received by the Debtor in respect of the Collateral shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union. All moneys collected or received by the Credit Union in respect of the Collateral may be applied on account of such parts of the indebtedness and liability of the Debtor as to the Credit Union seems best or, in the discretion of the Credit Union, may be released to the Debtor, all without prejudice to the liability of the Debtor or the Credit Union's right to hold an realize this security.
- (d) The Debtor shall remain liable to the Credit Union for any deficiency alter the proceeds of any sale, lease or disposition of Collateral are received by the Credit Union.
- (e) All rights, powers and remedies of the Credit Union under this Agreement may be exercised separately or in combination and shall be in addition to, and not in substitution for, any other security now or hereafter held by the Credit Union.

**7. CHARGES AND EXPENSES**

The Credit Union may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (expressly including legal advice and services) in or in connection with realizing, disposing of, retaining or collecting the Collateral or any part thereof. Such sums shall be a first charge on the proceeds of realization, disposition or collection. The Credit Union may at its option pay taxes, discharge any encumbrance or charge claimed (whether validly or not) against the Collateral and pay any amount which, in the Credit Union's sole discretion, it may consider requisite to secure possession of the Collateral with or without litigation or compromise. The Credit Union may settle any litigation in respect of the Collateral or the possession thereof, and may pay for insurance, repairs and maintenance to the Collateral, and any sum so paid by the Credit Union shall constitute indebtedness of the Debtor secured hereunder which the Debtor shall repay on demand.

**8. POSSESSION OF COLLATERAL**


Until default, the Debtor may have possession of the Collateral and enjoy the same subject to the terms hereof. However, whether or not default has occurred, the Credit Union may at any time request that debtors on any accounts receivable be notified of the Credit Union's security interest. Until such notification is made, the Debtor shall continue to collect any accounts receivable but shall hold the proceeds received from collection in trust for the Credit Union without commingling the same with other funds, and shall turn the same over to the Credit Union immediately upon receipt in the identical form received.

**9. LOCATION OF COLLATERAL**

The Collateral, insofar as it consists of tangible property, is now and will hereafter be kept at the address listed above or the addresses listed on Schedule A.

**10. GENERAL**

- (a) This Agreement shall be a continuing agreement in every respect;
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- (c) The Debtor may terminate this Agreement by delivering written notice to the Credit Union at any time when the Debtor, or each of them, is not indebted or liable to the Credit Union. No remedy for the enforcement of the rights of the Credit Union hereunder shall be exclusive of or dependent on any other such remedy and any one or more of such remedies may from time to time be exercised independently or in combination. The security interest created or provide for by this Agreement is intended to attach when this Agreement is signed by the Debtor and delivered to the Credit Union. For greater certainty it is declared that any and all future loans, advances or other value which the Credit Union may in its discretion make or extend to or for the account of the Debtor or any one or more of them shall be secured by this Agreement. If more than one person executes this Agreement their Obligations hereunder shall be joint and several.
- (d) In construing the Agreement, the word "Debtor" and the personal pronouns "he" or "his" and any verb relating thereto shall be read and construed as the number and gender of the parties signing this Agreement may require.

Initials




**BUSINESS LOAN GENERAL SECURITY AGREEMENT**

(e) The Credit Union may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Debtor, debtors of the Debtor, sureties and others, and with the Collateral and other securities, as the Credit Union may see fit and without prejudice to the liability of the Debtor or the Credit Union's right to hold and realize this security.

SIGNED, SEALED and DELIVERED, this 29 day of April  
2012 at Toronto, Ontario.

\_\_\_\_\_  
Witness Signature of Member

\_\_\_\_\_  
Witness Signature of Member

Member	Middle Initial	Date of Birth Day, Month, Year	Gender M, F
1			
2			

**P.M.R. INC.**

\_\_\_\_\_  
Corporation and/or Trade Name of Member

Per: [Signature] Authorized Signing Officer Title President

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

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

Initials  
[Signature]



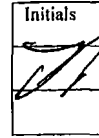


**GENERAL SECURITY AGREEMENT**

**SCHEDULE "A"**

The following are the addresses of the locations of the Collateral in addition to the address given on Page One of this original security agreement:

64 Jardin Drive, Unit 7,  
Concord, Ontario L4K 3P3





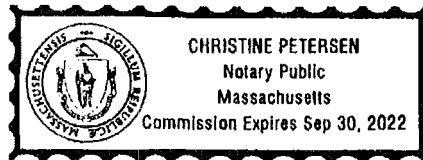
**TAB Y**



Attached is Exhibit "Y" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





Request ID: 019120640  
 Transaction ID: 61532007  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2016/06/29  
 Time Report Produced: 08:25:58  
 Page: 1

# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2365837	G.A.J.S. HOLDINGS INC.	2013/03/20
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
		Amalgamation Ind.
446 FAIRLAWN AVENUE		NOT APPLICABLE
		NOT APPLICABLE
TORONTO		New Amal. Number
ONTARIO		Notice Date
CANADA M5M 1V1		NOT APPLICABLE
		NOT APPLICABLE
Mailing Address		Letter Date
		NOT APPLICABLE
446 FAIRLAWN AVENUE		Revival Date
		Continuation Date
		NOT APPLICABLE
		NOT APPLICABLE
TORONTO		Transferred Out Date
ONTARIO		Cancel/Inactive Date
CANADA M5M 1V1		NOT APPLICABLE
		NOT APPLICABLE
		EP Licence Eff.Date
		EP Licence Term.Date
		NOT APPLICABLE
		NOT APPLICABLE
		Date Commenced in Ontario
		Date Ceased in Ontario
		NOT APPLICABLE
		NOT APPLICABLE
Activity Classification	Number of Directors Minimum      Maximum	
NOT AVAILABLE	00001      00010	





Request ID: 019120640  
Transaction ID: 61532007  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2016/06/29  
Time Report Produced: 08:25:58  
Page: 2

## CORPORATION PROFILE REPORT

Ontario Corp Number

2365837

Corporation Name

G.A.J.S. HOLDINGS INC.

Corporate Name History

G.A.J.S. HOLDINGS INC.

Effective Date

2013/03/20

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:  
Name (Individual / Corporation)

GILA  
ALTSHULER

Address

446 FAIRLAWN AVENUE  
  
TORONTO  
ONTARIO  
CANADA M5M 1V1

Date Began

2013/03/20

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y



Request ID: 019120640  
Transaction ID: 61532007  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2016/06/29  
Time Report Produced: 08:25:58  
Page: 3

# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2365837	G.A.J.S. HOLDINGS INC.

Administrator: Name (Individual / Corporation)	Address
GILA ALTSHULER	446 FAIRLAWN AVENUE  TORONTO ONTARIO CANADA M5M 1V1

Date Began	First Director	
2013/03/20	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
GILA ALTSHULER	446 FAIRLAWN AVENUE  TORONTO ONTARIO CANADA M5M 1V1

Date Began	First Director	
2013/03/20	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	SECRETARY	Y



Request ID: 019120640  
Transaction ID: 61532007  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2016/06/29  
Time Report Produced: 08:25:58  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2365837

G.A.J.S. HOLDINGS INC.

Administrator:  
Name (Individual / Corporation)

Address

GILA  
ALTSHULER

446 FAIRLAWN AVENUE

TORONTO  
ONTARIO  
CANADA M5M 1V1

Date Began  
2013/03/20

First Director  
NOT APPLICABLE

Designation  
OFFICER

Officer Type  
TREASURER

Resident Canadian  
Y



Request ID: 019120640  
Transaction ID: 61532007  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2016/06/29  
Time Report Produced: 08:25:58  
Page: 5

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2365837

G.A.J.S. HOLDINGS INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2014

1C

2014/10/04 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.





**TAB Z**



Attached is Exhibit "Z" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





721

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**AIRD & BERLIS LLP**

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Barristers and Solicitors

Sam Babe  
Direct: 416.865.7718  
E-mail: sbabe@airdberlis.com

May 16, 2016

**BY EMAIL**

**J.S.N. Jewellery Inc.  
J.S.N. Jewellery UK Limited  
GMJ Corp.  
Ben Moss Jewellers Western Canada Ltd.  
64 Jardin Drive, Unit 7  
Concord, Ontario L4K 3P3**

Dear Sirs/Mesdames,

**Re: Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc., J.S.N.  
Jewellery UK Limited, GMJ Corp. and Ben Moss Jewellers Western  
Canada Ltd. (the "Debtors")**

---

We are the solicitors for Salus Capital Partners, LLC ("**Salus**") in connection with its lending arrangements with the Debtors. The Debtors are jointly and severally indebted to Salus and the other lenders (collectively, the "**Lenders**") under credit facilities (the "**Credit Facilities**") provided pursuant to the credit agreement dated as of July 18, 2013 among, *inter alia*, Salus, as lender and administrative agent, and the Debtors (as amended, supplemented, restated or replaced from time to time, the "**Credit Agreement**").

The following amounts are owing for principal and interest pursuant to the Credit Facilities as at May 12, 2016 (collectively, the "**Facility Indebtedness**"):

**CAD Revolving Loan**

Principal  
Interest

CAD \$28,177,463.17  
CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

**USD Revolving Loan**

Principal  
Interest

US \$19,226,321.62  
US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.



**Term Loan A**

Principal	CAD \$4,750,000.00
Interest	CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

**Term Loan B**

Principal	CAD \$4,871,987.17
Interest	CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal	US \$3,500,000.00
Interest	US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

The Facilities Indebtedness, together with all fees arising under the Credit Agreement for which the Debtor is responsible, any and all costs and expenses incurred by Salus (including, without limitation, Salus' legal and other professional fees herein) and the face amounts of any outstanding letters of credit are hereinafter referred to as the "Indebtedness".

The Indebtedness is secured by, among other things:

1. a Canadian General Security Agreement dated July 18, 2013 granted in favour of Salus, as collateral agent by, among others, J.S.N. Jewellery Inc. and Ben Moss Jewellers Western Canada Ltd. (pursuant to a Joinder to Canadian General Security Agreement entered into as of July 18, 2013);
2. a Security Agreement dated as of July 18, 2013 between J.S.N. Jewellery Inc. and GMJ Corporation, a grantors, and Salus, as collateral agent; and
3. a Debenture dated July 18, 2013 between by J.S.N. Jewellery UK Limited and Salus, as administrative agent and collateral agent,

(collectively, the "Security").

As you are already aware, the Debtors are in breach of certain of their covenants under the Credit Agreement, which breaches constitute an Event of Default. As a result, the Debtors' right to receive any further extension or other accommodations of credit from the Lenders, pursuant to the Credit Facilities or otherwise, is hereby terminated.







On behalf of Salus, we hereby formally demand payment of the amount of the Indebtedness, together with interest as set out above from the date hereof to the date of payment in full, by not later than ten (10) days from the date hereof. Interest will continue to accrue on the Indebtedness at the rates set out above.


If payment of the Indebtedness is not received by the date set out above, Salus will take such steps as it may consider necessary or appropriate to collect the Indebtedness, including, without limitation, the appointment of a receiver and/or manager of the Debtors.

On behalf of Salus, we enclose a Notice of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* for each of the Debtors (collectively, the "BIA Notices").

We reserve our right to take proceedings within the 10-day period associated with the BIA Notices, if circumstances warrant such proceedings.

Yours very truly,

**AIRD & BERLIS LLP**



Sam Babe  
encl.

cc. Kyle Shonak  
cc. Andrew Punier  
cc. Aaron Miller

25674396.1



**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Bankruptcy and Insolvency Act, Subsection 244(1))**

By Email

**TO: J.S.N. Jewellery Inc.**  
 64 Jardin Drive, Unit 7  
 Concord, Ontario L4K 3P3

*an insolvent company*

**TAKE NOTICE** that:

1. Salus Capital Partners, LLC (the “**Lender**”), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
  - (a) all of the undertaking, property and assets of J.S.N. Jewellery Inc. (the “**Debtor**”), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
  
2. The security that is to be enforced is in the form of, *inter alia*:
  - (a) a Canadian General Security Agreement dated July 18, 2013 granted in favour of the Lender, as collateral agent, by, among others, the Debtor and Ben Moss Jewellers Western Canada Ltd. (pursuant to a Joinder to Canadian General Security Agreement entered into as of July 18, 2013); and
  - (b) a Security Agreement dated as of July 18, 2013 between the Debtor and GMJ Corporation, a grantors, and Salus, as collateral agent,

(collectively, the “**Security**”).
  
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

**CAD Revolving Loan**

Principal  
 Interest

**CAD \$28,177,463.17**  
**CAD \$91,998.60**

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

**USD Revolving Loan**

Principal  
 Interest

**US \$19,226,321.62**  
**US \$63,969.21**

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.



**Term Loan A**

Principal

CAD \$4,750,000.00

Interest

CAD \$21,295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

**Term Loan B**

Principal

CAD \$4,871,987.17

Interest

CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal

US \$3,500,000.00

Interest

US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Debtor is responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

**DATED** at Toronto this 16<sup>th</sup> day of May, 2016.

**SALUS CAPITAL PARTNERS, LLC**  
by its solicitors, Aird & Berlis LLP

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

Sam Babe  
Brookfield Place, Suite 1800  
181 Bay Street, Box 754  
Toronto, ON M5J 2T9  
Tel: 416-863-1500  
Fax: 416-863-1515



**ACKNOWLEDGMENT AND CONSENT**  
**(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))**

**TO: SALUS CAPITAL PARTNERS, LLC**  
**and its solicitors, Aird & Berlis LLP**

J.S.N. Jewellery Inc. hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

**DATED** this 12<sup>th</sup> day of May, 2016

**J.S.N. JEWELLERY INC.**

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

Name:

Authorized Signing Officer





**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Bankruptcy and Insolvency Act, Subsection 244(1))**  
By Email

**TO: Ben Moss Jewellers Western Canada Ltd.**  
64 Jardin Drive, Unit 7  
Concord, Ontario L4K 3P3

*an insolvent company*

**TAKE NOTICE that:**

1. Salus Capital Partners, LLC (the “**Lender**”), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
  - (a) all of the undertaking, property and assets of Ben Moss Jewellers Western Canada Ltd. (the “**Debtor**”), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
2. The security that is to be enforced is in the form of, *inter alia*, a Canadian General Security Agreement dated July 18, 2013 granted in favour of the Lender, as collateral agent, by, among others, the Debtor (pursuant to a Joinder to Canadian General Security Agreement entered into as of July 18, 2013) and J.S.N. Jewellery Inc. (the “**Security**”).
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

<b>CAD Revolving Loan</b>	
Principal	<b>CAD \$28,177,463.17</b>
Interest	<b>CAD \$91,998.60</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

<b>USD Revolving Loan</b>	
Principal	<b>US \$19,226,321.62</b>
Interest	<b>US \$63,969.21</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

<b>Term Loan A</b>	
Principal	<b>CAD \$4,750,000.00</b>
Interest	<b>CAD \$21295.83</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.



**Term Loan B**Principal  
InterestCAD \$4,871,987.17  
CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**Principal  
InterestUS \$3,500,000.00  
US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Debtor is responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

**DATED** at Toronto this 16<sup>th</sup> day of May, 2016.

**SALUS CAPITAL PARTNERS, LLC**  
by its solicitors, Aird & Berlis LLP

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

Sam Babe  
Brookfield Place, Suite 1800  
181 Bay Street, Box 754  
Toronto, ON M5J 2T9  
Tel: 416-863-1500  
Fax: 416-863-1515



**ACKNOWLEDGMENT AND CONSENT  
(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))**

**TO: SALUS CAPITAL PARTNERS, LLC  
and its solicitors, Aird & Berlis LLP**

Ben Moss Jewellers Western Canada Ltd. hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

**DATED** this 12<sup>th</sup> day of May, 2016

**BEN MOSS JEWELLERS WESTERN  
CANADA LTD.**

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

Name:  
Authorized Signing Officer



**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Bankruptcy and Insolvency Act, Subsection 244(1))**  
 By Email

**TO: J.S.N. Jewellery UK Limited**  
 64 Jardin Drive, Unit 7  
 Concord, Ontario L4K 3P3

*an insolvent company*

TAKE NOTICE that:

1. Salus Capital Partners, LLC (the "**Lender**"), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
  - (a) all of the undertaking, property and assets of J.S.N. Jewellery UK Limited (the "**Debtor**"), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
2. The security that is to be enforced is in the form of, *inter alia*, a Debenture dated July 18, 2013 between the Debtor and Salus Capital Partners, LLC, as administrative agent and collateral agent (the "**Security**").
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

**CAD Revolving Loan**

Principal  
 Interest

CAD \$28,177,463.17  
 CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

**USD Revolving Loan**

Principal  
 Interest

US \$19,226,321.62  
 US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

**Term Loan A**

Principal  
 Interest

CAD \$4,750,000.00  
 CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.





**Term Loan B**

Principal  
Interest

CAD \$4,871,987.17  
CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal  
Interest

US \$3,500,000.00  
US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

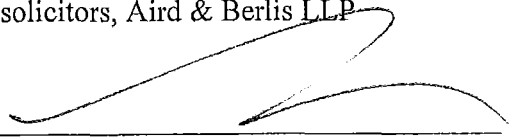
together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Debtor is responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

- 4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

**DATED** at Toronto this 16<sup>th</sup> day of May, 2016.

**SALUS CAPITAL PARTNERS, LLC**  
by its solicitors, Aird & Berlis LLP

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



Sam Babe  
 Brookfield Place, Suite 1800  
 181 Bay Street, Box 754  
 Toronto, ON M5J 2T9  
 Tel: 416-863-1500  
 Fax: 416-863-1515



**ACKNOWLEDGMENT AND CONSENT  
(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))**

**TO: SALUS CAPITAL PARTNERS, LLC  
and its solicitors, Aird & Berlis LLP**

J.S.N. Jewellery UK Limited hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

**DATED** this 12<sup>th</sup> day of May, 2016

**J.S.N. JEWELLERY UK LIMITED**

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



**NOTICE OF INTENTION TO ENFORCE SECURITY**  
*(Bankruptcy and Insolvency Act, Subsection 244(1))*  
By Email

**TO: GMJ Corp.**  
64 Jardin Drive, Unit 7  
Concord, Ontario L4K 3P3

*an insolvent company*

**TAKE NOTICE** that:

1. Salus Capital Partners, LLC (the “**Lender**”), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
  - (a) all of the undertaking, property and assets of GMJ Corp. (the “**Debtor**”), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
2. The security that is to be enforced is in the form of, *inter alia*, a Security Agreement dated as of July 18, 2013 between the Debtor and J.S.N. Jewellery Inc., a grantors, and Salus, as collateral agent (the “**Security**”)
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

<b>CAD Revolving Loan</b>	
Principal	<b>CAD \$28,177,463.17</b>
Interest	<b>CAD \$91,998.60</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

<b>USD Revolving Loan</b>	
Principal	<b>US \$19,226,321.62</b>
Interest	<b>US \$63,969.21</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

<b>Term Loan A</b>	
Principal	<b>CAD \$4,750,000.00</b>
Interest	<b>CAD \$21295.83</b>

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.



**Term Loan B**

Principal  
Interest

CAD \$4,871,987.17  
CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal  
Interest

US \$3,500,000.00  
US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

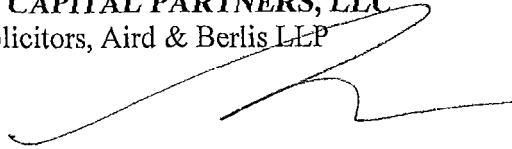
together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Debtor is responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

- 4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 16<sup>th</sup> day of May, 2016.

**SALUS CAPITAL PARTNERS, LLC**  
by its solicitors, Aird & Berlis LLP

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

  
Sam Babe  
Brookfield Place, Suite 1800  
181 Bay Street, Box 754  
Toronto, ON M5J 2T9  
Tel: 416-863-1500  
Fax: 416-863-1515





**ACKNOWLEDGMENT AND CONSENT  
(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))**

**TO: SALUS CAPITAL PARTNERS, LLC  
and its solicitors, Aird & Berlis LLP**

GMJ Corp. hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

**DATED** this 12<sup>th</sup> day of May, 2016

**GMJ CORP.**

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







Sam Babe  
Direct: 416.865.7718  
E-mail: sbabe@airdberlis.com

May 16, 2016

BY EMAIL

2373138 Ontario Inc.  
64 Jardin Drive, Unit 7  
Concord, Ontario L4K 3P3

Dear Sirs/Mesdames,

Re: **Guarantee of Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp. and Ben Moss Jewellers Western Canada Ltd. (the "Borrowers")**

We are the solicitors for Salus Capital Partners, LLC ("Salus") in connection with its lending arrangements with the Borrowers. The Borrowers are in default of their obligations owing to the Salus and Salus has demanded repayment of the loans owed to it by the Borrowers.

By way of a Guarantee Agreement dated July 18, 2103 (the "Guarantee"), 2373138 Ontario Inc. (the "Guarantor") irrevocably and unconditionally guaranteed payment of each and all the obligations of the Borrowers to Salus.

The Borrowers are jointly and severally indebted to Salus and the other lenders (collectively, the "Lenders") under credit facilities (the "Credit Facilities") provided pursuant to the credit agreement dated as of July 18, 2013 among, *inter alia*, Salus, as lender and administrative agent, and the Borrowers, and 2373138 Ontario Inc., Forever Jewellery Inc. and Joseph Shilon, as guarantors (as amended, supplemented, restated or replaced from time to time, the "Credit Agreement").

The following amounts are owing for principal and interest pursuant to the Credit Facilities as at May 12, 2016 (collectively, the "Facility Indebtedness"):

Revolving Loan  
Principal  
Interest

CAD \$28,177,463.17  
CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.



**USD Revolving Loan**

Principal

US \$19,226,321.62

Interest

US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

**Term Loan A**

Principal

CAD \$4,750,000.00

Interest

CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

**Term Loan B**

Principal

CAD \$4,871,987.17

Interest

CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal

US \$3,500,000.00

Interest

US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

The Facilities Indebtedness, together with all fees arising under the Credit Agreement for which the Debtor is responsible, any and all costs and expenses incurred by Salus (including, without limitation, Salus' legal and other professional fees herein) and the face amounts of any outstanding letters of credit are hereinafter referred to as the "Indebtedness".

The Guarantee is secured by, among other things, a Canadian General Security Agreement granted by the Guarantor dated July 18, 2013 in favour of Salus, as collateral agent, by, among others, the Guarantor (the "Security").

As you are already aware, the Borrowers are in breach of certain of their covenants under the Credit Agreement, which breaches constitute an Event of Default. As a result, the Debtors' right to receive any further extension or other accommodations of credit from the Lenders, pursuant to the Credit Facilities or otherwise, has been terminated.

On behalf of Salus, we hereby formally demand payment of the amount of the Indebtedness, together with interest as set out above from the date hereof to the date of payment in full, by not later than ten (10) days from the date hereof. Interest will continue to accrue on the Indebtedness at the rates set out above.





If payment of the Indebtedness is not received by the date set out above, Salus will take such steps as it may consider necessary or appropriate to collect the Indebtedness, including, without limitation, the appointment of a receiver and/or manager of the Guarantor.

On behalf of Salus, we enclose a Notice of Intention to Enforce Security delivered pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (the "BIA Notice").

We reserve our right to take proceedings within the 10-day period associated with the BIA Notices, if circumstances warrant such proceedings.

Yours very truly,

**AIRD & BERLIS LLP**



Sam Babe  
encl.

cc. Kyle Shonak  
cc. Andrew Punier  
cc. Aaron Miller

25941242.1



**NOTICE OF INTENTION TO ENFORCE SECURITY**  
*(Bankruptcy and Insolvency Act, Subsection 244(1))*

By Email

**TO: 2373138 Ontario Inc.**  
 64 Jardin Drive, Unit 7  
 Concord, Ontario L4K 3P3

*an insolvent company*

**TAKE NOTICE that:**

1. Salus Capital Partners, LLC (the "**Lender**"), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
  - (a) all of the undertaking, property and assets of 2373138 Ontario Inc. (the "**Debtor**"), including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other personal and moveable property of the Debtor.
2. The security that is to be enforced is in the form of, *inter alia*, a Canadian General Security Agreement dated July 18, 2013 granted in favour of the Lender, as collateral agent, by, among others, the Debtor (the "**Security**").
3. The total amount of indebtedness secured by the Security, as at May 12, 2016 is as follows:

**CAD Revolving Loan**

Principal  
 Interest

CAD \$28,177,463.17  
 CAD \$91,998.60

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum, except in respect of the Permitted Over-advance on which interest accrued at the rate of 3% per month.

**USD Revolving Loan**

Principal  
 Interest

US \$19,226,321.62  
 US \$63,969.21

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

**Term Loan A**

Principal  
 Interest

CAD \$4,750,000.00  
 CAD \$21295.83

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.



**Term Loan B**Principal  
InterestCAD \$4,871,987.17  
CAD \$25,090.73

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**Principal  
InterestUS \$3,500,000.00  
US \$19,541.67

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

together with all fees arising under the Credit Agreement dated as of July 18, 2013, as amended, for which the Borrowers thereunder are responsible, any and all costs and expenses incurred by the Lender (including, without limitation, the Lender's legal and other professional fees herein) and the face amounts of any outstanding letters of credit.

4. The Lender will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 16<sup>th</sup> day of May, 2016.

**SALUS CAPITAL PARTNERS, LLC**  
by its solicitors, Aird & Berlis LLP

Per: 

Sam Babe  
Brookfield Place, Suite 1800  
181 Bay Street, Box 754  
Toronto, ON M5J 2T9  
Tel: 416-863-1500  
Fax: 416-863-1515



**ACKNOWLEDGMENT AND CONSENT**  
**(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))**

**TO: SALUS CAPITAL PARTNERS, LLC**  
**and its solicitors, Aird & Berlis LLP**

2373138 Ontario Inc. hereby acknowledges the receipt of a Notice of Intention to Enforce Security of Salus Capital Partners, LLC pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Salus Capital Partners, LLC's solicitors, on the date hereof and does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

**DATED** this 12<sup>th</sup> day of May, 2016

**2373138 ONTARIO INC.**

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





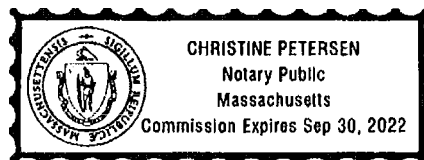
**TAB AA**



Attached is Exhibit "AA" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public

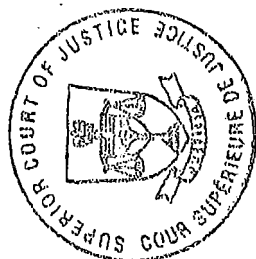




Court File No. CV-16-11397-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) WEDNESDAY, THE 18TH  
MR. JUSTICE NEWBOULD ) DAY OF MAY, 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 BEN MOSS JEWELLERS WESTERN CANADA LTD.

Applicant

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by Ben Moss Jewellers Western Canada Ltd. (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 Naveed Manzoor sworn May 16, 2016 and the Exhibits thereto (the "Initial Affidavit"), the pre-filing report of Alvarez & Marsal Canada Inc. ("A&M"), in its capacity as proposed monitor of the Applicant dated May 17, 2016, and on hearing the submissions of counsel for the Applicant, Salus Capital Partners, LLC ("Salus"), and A&M and on reading the consent of A&M to act as the monitor of the Applicant (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**"), which for greater certainty does not include Consignment Goods (as defined below). 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, appraisers, valuers, 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 Cash Management System (as defined and described in the Initial Affidavit) or, with the consent of the Monitor and Salus, replace it in part or in whole with another substantially similar central cash management system and that any present or future bank or other Person (as hereinafter defined) providing any part of the Cash Management System, including without limitation,

Canadian Imperial Bank of Commerce, Bank of Montreal, the Royal Bank of Canada, the Toronto-Dominion Bank and the Bank of Nova Scotia, 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 other than the Applicant and Salus, 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 availability under the DIP Facility (as defined herein) and in accordance with the Budget (as defined in the DIP Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and reasonable expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) amounts necessary in order to continue to honour or comply with existing return policies, gift cards and similar programs offered by the Applicant;
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicant prior to the date of this order or to obtain the release of goods contracted for prior to the date of this Order by third party suppliers if, in the opinion of the Applicant, the supplier is critical to the Business and ongoing operations of the Applicant;

- (e) any other costs or expenses that are deemed necessary for the preservation of the Property and/or the Business by the Applicant with the consent of the Monitor and Salus.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, and subject to availability under the DIP Facility and in accordance with the Budget, 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, 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 and directors and officers tail and/or run off insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied 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 taxes, harmonized sales taxes 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, except as specifically permitted herein and subject to the Budget and the terms of the DIP Facility, 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, provided however that the Applicant is hereby authorized and directed to make all such payments under the DIP Agreement, including the Pre-Petition Liabilities (as defined in the DIP Agreement) in accordance with the DIP Facility;
- (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.

10. 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.

**RESTRUCTURING**

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$200,000 in any one transaction or \$500,000 in the aggregate provided that, with respect to any leased premises, the Applicant may permanently but not temporarily cease, downsize or shut down unless provided for in the applicable lease;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) in accordance with paragraphs 12 and 13, with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers to be on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;
- (e) under the supervision of the Monitor, pursue all avenues of refinancing the Business or Property, in whole or part, and market the Business and the Property in accordance with the RISP (as defined herein).

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 until and including June 15, 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, the CRO (as defined below) 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.

15. THIS COURT ORDERS that during the Stay Period, no Proceeding shall be commenced or continued: (i) against or in respect of J.S.N. Jewellery Inc. ("JSN") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of, or that relates to, any agreement involving the Applicant, or the obligations, liabilities and claims of, against or affecting the Applicant or the Business (collectively, the "**Applicant Related Liabilities**"); (ii) against or in respect of any of JSN's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**JSN Property**") with respect to any Applicant Related Liabilities (the matters referred to in (i) and (ii) being, collectively, the "**Proceedings Against JSN**"), except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings Against JSN currently under way by any Person are hereby stayed and suspended pending further order of this Court, provided however that this paragraph shall only be effective as against Persons to whom there are no amounts due and owing by the Applicant as of the date of this Order and to whom the ongoing payment of amounts that will become payable in the ordinary course are provided for in the Applicant's cash flow statements, and provided further that this paragraph shall not apply to a real property landlord of the Applicant that provides the Applicant and Salus with five (5) days' written notice that it intends to commence or continue a Proceeding Against JSN.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. 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, the CRO 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.

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any Person against or in respect of any of JSN or JSN Property in respect of any Applicant Related Liabilities 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 JSN to carry on any business which JSN 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, provided however that this paragraph shall only be effective as against Persons to whom there are no amounts due and owing by the Applicant as of the date of this Order and to whom the ongoing payment of amounts that will become payable in the ordinary course are provided for in the Applicant's cash flow statements, and provided further that this paragraph shall not apply to a real property landlord of the Applicant that provides the Applicant and Salus with five (5) days' written notice that it intends to exercise any right or remedy against or in respect of any of JSN or JSN Property in respect of any Applicant Related Liabilities.

#### **NO INTERFERENCE WITH RIGHTS**

18. 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**

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, disaster recovery, centralized banking services, payroll and benefits services, insurance, transportation services, freight services, utility, customs clearing, gemstone grading, warehouse and logistics services, security services or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. 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 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**

21. 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 for the payment or performance of such obligations.

#### **APPOINTMENT OF CRO**

22. THIS COURT ORDERS that FAAN Advisors Group Inc. ("FAAN") be and is hereby appointed Chief Restructuring Officer of the Applicant ("CRO"). The CRO shall have the authority to direct the operations and management of the Applicant and the Restructuring, and the officers of the Applicant shall report to the CRO. For greater certainty, the CRO shall be entitled to exercise any powers of the Applicant set out herein, to the exclusion of any other Person (including any board member of the Applicant). The CRO shall provide timely updates to the Monitor in respect of its activities.

23. THIS COURT ORDERS that the CRO shall not be or be deemed to be a director, officer or employee of the Applicant.

24. THIS COURT ORDERS that nothing in this Order shall be construed as resulting in FAAN or the CRO being an employer, successor employer, responsible person or operator within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever.

25. THIS COURT ORDERS that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

26. THIS COURT ORDERS that (i) any indemnification obligations of the Applicant in favour of the CRO and (ii) the payment obligations of the Applicant to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.

27. THIS COURT ORDERS that any claims of the CRO shall be treated as unaffected in any Plan filed by the Applicants under the CCAA or any proposal ("Proposal") under the *Bankruptcy and Insolvency Act* (the "BIA").

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

28. 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.

29. 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 \$1.5 million, as security for the indemnity provided in paragraph 28 of this Order. The Directors' Charge shall have the priority set out in paragraphs 61 and 63 herein.

30. 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 28 of this Order.

#### **REFINANCING AND/OR INVESTMENT SOLICITATION PROCESS**

31. THIS COURT ORDERS AND DIRECTS the Applicant to immediately commence, under the supervision and with the assistance of the Monitor, a Refinancing and/or Investment Solicitation Process in accordance with the terms attached hereto as Schedule "A" to this Order (the "RISP") for the purpose of offering the opportunity for potential investors to refinance all or part of the Credit Facilities (as defined in the RISP), to invest in the Applicant and/or JSN., and/or purchase all or a portion of the Property.

32. THIS COURT ORDERS that the RISP is hereby approved and the Applicant, the CRO and the Monitor are hereby authorized and directed to perform each of their obligations thereunder.

33. THIS COURT ORDERS that: (i) nothing in the RISP shall amend or vary, or be deemed to amend or vary the terms of a real property lease; and (ii) where any real property leases are not, in accordance with their terms, transferrable or assignable to a Successful Bidder(s) who has submitted the Successful Bid(s) (as such terms are respectively defined in the RISP), without first obtaining the consent of the applicable landlord, no such real property leases shall be transferred conveyed, assigned or vested in any such successful bidder(s), save and except: (A) to the extent that the respective consents have been obtained from the applicable landlords; or (B) upon further Order of this Court.

#### **STORE SALE**

34. THIS COURT ORDERS that with respect to the Consulting & Agency Agreement dated as of April 28, 2016 between Gordon Brothers Canada ULC (the "Agent") and the Applicant (the "Agency Agreement"), the Agent is authorized to conduct a sale (the "Sale") to liquidate the Merchandise and FF&E, as applicable (as both terms are defined in the Agency Agreement),



in the Applicant's stores (the "Stores") in accordance with this Order and, subject to paragraph 35 below, the Agency Agreement, and to advertise and promote the Sale within the Stores in accordance with the terms hereof and thereof.

35. THIS COURT ORDERS that notwithstanding the terms of the Agency Agreement, the Agent shall conduct the Sale in accordance with sale guidelines to be agreed to between the Applicant, the Agent, Salus and the landlords of the Stores that have contacted the Applicant (the "Sale Guidelines"), which Sale Guidelines shall be consistent with standard court-approved sale guidelines and which the Applicant shall seek approval of at its next motion before this Court.

36. THIS COURT ORDERS that the Agent, in its capacity as agent of the Applicant, is authorized to market and sell the Merchandise and FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limitation the Charges (as defined below), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all of such Claims, charges (including the Charges), security interests and liens collectively referred to herein as "Encumbrances"), which Encumbrances, subject to this Order, will attach instead to the proceeds of sale of such Merchandise or FF&E received or to be received by the Applicant under the Agency Agreement from and after the date hereof, in the same order and priority as they existed on the date the Sale was commenced.

37. THIS COURT ORDERS that subject to the terms of this Order, the Agent shall have the right to enter and use the Store locations and all related Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Store locations, and other assets of the Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and, for such purposes, the Agent shall be entitled to the benefit of the

Applicant's stay of proceedings provided under this Order, as such stay of proceedings may be extended by further order of the Court.

#### AGENT LIABILITY

38. THIS COURT ORDERS that the Agent shall act solely as an agent to the Applicant and that it shall not be liable for any claims against the Applicant other than as expressly provided in the Agency Agreement. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Applicant's employees located at the Stores or any other property of the Applicant;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) the Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages fines, damages or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except in accordance with the Agency Agreement.

39. THIS COURT ORDERS that to the extent that any landlord may have a claim against the Applicant arising solely out of the conduct of the Agent in conducting the Sale for which the Applicant has claims against the Agent under the Agency Agreement, then the Applicant shall be deemed to have assigned free and clear such claims to the applicable landlord (the "**Assigned Landlord Rights**"); provided that each such landlord shall only be permitted to advance each such claim against the Agent if: (i) written notice, including the reasonable details of such claim (the "**Landlord Damage Claim**"), is provided by such landlord to the Agent and the Applicant within 15 days of the date that the landlord is provided with access to the leased premises to inspect the leased premises (which access shall be provided by the Applicant within fifteen (15)

days following the Sale Termination Date (as defined in the Agency Agreement)) (the "Landlord Notice of Claim"); (ii) the Applicant has not commenced a claim against the Agent for the Landlord Damage Claim in a commercially reasonable manner within twenty (20) business days of receipt of the Landlord Notice of Claim; and (iii) the landlord has commenced its Landlord Damage Claim within 45 business days of the date of its Landlord Notice of Claim.

#### **AGENT AN UNAFFECTED CREDITOR**

40. THIS COURT ORDERS that the Agency Agreement, including the Assigned Landlord Rights contained therein, shall not be repudiated, resiliated or disclaimed by the Applicant nor shall the claims of the Agent pursuant to the Agency Agreement be compromised or arranged pursuant to any Plan filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA.

41. THIS COURT ORDERS that the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan or Proposal. For greater certainty, the Agent shall not be affected by any stay of proceedings with respect to non-payment under the Agency Agreement and the Agent shall, subject to the terms of the Agency Agreement, be entitled to exercise its remedies for non-payment under the Agency Agreement.

#### **BULK SALES ACT AND OTHER LEGISLATION**

42. THIS COURT ORDERS AND DECLARES that the transactions contemplated under the Agency Agreement shall be exempt from the application of any applicable *Bulk Sales Act* and any other equivalent federal or provincial legislation.

43. THIS COURT ORDERS that pursuant to clause 7(3) (c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), the Applicant is authorized and permitted to disclose to the Agent all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees and that the Agent shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects similar to the prior use of such information by the Applicant.

#### **CONSIGNMENT GOODS**

44. THIS COURT ORDERS that the proceeds from the sale of any goods that were supplied to the Applicant on a consignment basis, as determined by the Monitor in its sole discretion ("Consignment Goods"), shall be returned by the Applicant to the supplier of such Consignment Goods on terms to be agreed upon between the Applicant and such supplier. For greater certainty, this paragraph shall apply to the proceeds from Consignment Goods that were sold both prior to and following the date of this Order.

#### APPOINTMENT OF MONITOR

45. THIS COURT ORDERS that A&M 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.

46. 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) liaise with the CRO, the Agent and Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (c) 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;
- (d) assist the Applicant, to the extent required by the Applicant, in its dissemination of, to the DIP Lender and its counsel, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (e) 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 in accordance with the Definitive Documents;
- (f) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (g) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and/or data held by third parties, and other financial documents of the Applicant (whether held by the Applicant or by a third-party and regardless of whether such third party is an affiliate or related party of the Applicant), to the extent that is necessary to adequately assess the Applicant's business and historical and/or prospective financial affairs or to perform its duties arising under this Order;
- (i) consult with the Applicant, the CRO, the Agent and any Assistants retained in connection with the Restructuring;
- (j) supervise and assist the Applicant with the implementation of the RISP;
- (k) be at liberty to engage independent legal counsel or such other persons, or utilize the services of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

47. THIS COURT ORDERS that the Monitor is hereby authorized to prepare and provide reporting relating to the Guarantors (as defined in the DIP Agreement) to the DIP Lender, including in respect of supplier or other payments made by the Guarantors.

48. 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.

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

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

51. 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.

52. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicant as part of the costs of these proceedings subject to any assessments of the Court. The Applicant is hereby authorized and directed to pay the accounts of the CRO, the Monitor, counsel for the Monitor, counsel for the Applicant and counsel to Joseph Shilon (to the extent the Applicant has agreed to pay such accounts to counsel to Joseph Shilon) on a weekly basis and, in addition, the Applicant is hereby authorized to pay or to have paid to, as applicable, the CRO, the Monitor, counsel to the Monitor and counsel to the Applicant retainers in the amounts of \$25,000, \$100,000, \$50,000 and \$75,000 respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

53. 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.

54. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, the Applicant's counsel and counsel to Joseph Shilon 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 \$600,000, as security for their professional fees and disbursements incurred by the Applicant at the standard rates and charges of the CRO, the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, provided however that the Administration Charge shall not secure the professional fees and disbursements of Joseph Shilon's counsel that are incurred by the Applicant after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 61 and 63 hereof.

#### **DIP FINANCING**

55. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a revolving credit facility (the "**DIP Facility**") in order to finance the Applicant's working capital requirements and other general corporate purposes and other expenditures in accordance with the Applicant's cash flow statements pursuant and subject to the terms and conditions set forth in the Credit Agreement between Salus as collateral and

administrative agent (the "DIP Agent"), the lenders thereunder (the "DIP Lenders"), the Applicant and various guarantors dated as of May 17, 2016 (the "DIP Agreement"), provided that borrowings under such DIP Facility shall not exceed the principal amount of the U.S. dollar equivalent to CDN\$8,000,000 unless permitted by further Order of this Court and further provided that borrowings under the DIP Facility shall not exceed \$3.5 million prior to May 26, 2016, the date of the Comeback Hearing.

56. THIS COURT ORDERS that the DIP Facility and the DIP Agreement be and are hereby approved and the Applicant is hereby authorized and directed to execute and deliver the DIP Agreement.

57. 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, amendments and other definitive documents (collectively, and together with the DIP Agreement, the "Definitive Documents"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

58. THIS COURT ORDERS that the DIP Agent shall be entitled to the benefit of and is hereby granted a charge (the "DIP Charge") on the Property, which DIP Charge shall be in the aggregate amount of the obligations outstanding at any given time under the DIP Facility. The DIP Charge shall not secure any obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 61 and 63 hereof.

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

- (a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Agent, upon 2 business days' notice to the Applicant and the Monitor and upon



approval of this Court, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Definitive Documents and the DIP Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lenders to the Applicant against the obligations of the Applicant to the DIP Lenders under the Definitive Documents or the DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

60. THIS COURT ORDERS AND DECLARES that the DIP Lenders and the lenders under the Credit Facilities shall be treated as unaffected in any Plan filed by the Applicant under the CCAA, or any Proposal filed by the Applicant under the BIA, with respect to all advances made under the Definitive Documents.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

61. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Charge, as among them, shall be as follows:

- First – Administration Charge (to the maximum amount of \$600,000);
- Second – DIP Charge; and
- Third – Directors' Charge (to the maximum amount of \$1.5 million).

62. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the 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.

63. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other Encumbrances in favour of any Person, other than any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation.

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

65. THIS COURT ORDERS that the Charges and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to 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 Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Definitive Documents caused by or resulting from the Applicant

entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicant pursuant to this Order, the 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.

66. 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.

67. THIS COURT DECLARES that, pursuant to Section 7(3)(c) of PIPEDA and any regulations promulgated under authority of that Act, as applicable (the "Relevant Enactment"), the Applicant and the Monitor, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "Third Parties"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Applicant and the Monitor binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall, upon the request of the Applicant or the Monitor, return the personal information to the Applicant and the Monitor or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

**SERVICE AND NOTICE**

68. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) and the Winnipeg Free Press 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.

69. 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: [www.alvarezandmarsal.com/benmoss](http://www.alvarezandmarsal.com/benmoss) (the "Monitor's Website").

70. 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'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**

71. 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.

72. 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.

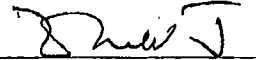
73. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. 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.

74. 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.

75. 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.

76. A comeback hearing in this matter shall be held on May 26, 2016 (the "**Comeback Hearing**").

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



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LE / DANS LE REGISTRE NO:

MAY 26 2016

PER / PAR:



## REFINANCING AND/OR INVESTMENT SOLICITATION PROCESS

### Introduction

On May 17, 2016, **BEN MOSS JEWELLERS WESTERN CANADA LTD.** (“**BM**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, the Court approved this Refinancing and/or Investment Solicitation Process (“**RISP**”).

The purpose of this RISP is to seek proposals for:

- i. a refinancing of all or part the Credit Facilities of the JSN Group (as defined below) under the Credit Agreement (a “**JSN Group Refinancing Proposal**”);
- ii. an equity investment in BM and/or JSN (as defined below) (a “**Reinvestment Proposal**”); and/or
- iii. a sale of all or a portion of the business and property of BM (a “**BM Sale Proposal**”, and together with a JSN Group Refinancing Proposal and a Reinvestment Proposal, the “**Potential Transactions**” and each a “**Potential Transaction**”)

from Qualified Bidders and to subsequently implement one or a combination of the Potential Transactions.

This RISP describes, among other things, the process by which interested parties and/or prospective bidders may evaluate and participate in the Potential Transactions, including: (a) the manner in which such parties may obtain preliminary information, execute NDAs and gain access or continue to have access to due diligence materials concerning the Potential Transactions; (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, in respect of the Potential Transactions; (c) the process for the evaluation of bids received; (d) the process for the ultimate selection of a Successful Bidder; and (e) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid (collectively, the “**Solicitation Process**”).

Capitalized terms used in this RISP and not otherwise defined have the meanings given to them in paragraph 1 below.

### Defined Terms

1. The following capitalized terms have the following meanings when used in this RISP:

“**Affiliates**” has the meaning set out in the DIP Credit Agreement.

“**Approval Motion**” is defined in paragraph 36.

“**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.

“**Business**” means the business of BM in the case of a BM Sale Proposal and the business of BM and JSN in the case of a JSN Group Refinancing Proposal or a Reinvestment Proposal, as the case may be.

“**Claims and Interests**” is defined in paragraph 9.

“**Confidential Information Memorandum/Memoranda**” is defined in paragraph 4.

“**Credit Agreement**” means the Credit Agreement among, *inter alia*, JSN and BM as borrowers and the Lender dated July 18, 2013.

“**Credit Facilities**” means the revolving credit facilities and three term loan credit facilities under the Credit Agreement.

“**CRO**” means FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of JSN, JSN Jewellery UK Limited, 2373138 Ontario Inc., Always and Forever Family Collection Incorporated, GMJ Corporation, P.M.R. Inc. and BM.

“**Deposit**” is defined in paragraph 28(j).

“**DIP Agreement**” means the Super Priority DIP Credit Agreement dated May 16, 2016 for a debtor in possession financing facility among BM, as borrower, certain of its Affiliates, as guarantors, and the Lender, in the CCAA proceedings.

“**Final Bid**” is defined in paragraph 27.

“**Form of Purchase Agreement**” means the form of purchase and sale agreement to be developed by BM in consultation with the Monitor and provided to those Qualified Bidders that submitted a Qualified LOI in respect of a BM Sale Proposal.

“**JSN**” means J.S.N. Jewellery Inc.

“**JSN Group**” means, collectively, JSN, JSN Jewellery UK Limited, 2373138 Ontario Inc., Always and Forever Family Collection Incorporated, GMJ Corporation, Forever Jewellery Inc., P.M.R. Inc. and BM.

“**Known Potential Bidders**” is defined in paragraph 5.

“**Lender Claims**” means the aggregate amount owing to the Lender arising from or related to the Credit Agreement and the DIP Agreement relating to the JSN Group as determined by the Lender in its reasonable credit discretion, which shall include, without limitation, all accrued and unpaid principal, interest, default interest and all fees, costs, charges and expenses all as may be due and payable under the Credit Agreement and the DIP Credit Agreement and/or the other related ancillary documents.

“**Lender**” means Salus Capital Partners, LLC as administrative agent and collateral agent for the lenders under the Credit Agreement and the DIP Agreement.



“**LOI**” is defined in paragraph 14.

“**Monitor**” means Alvarez & Marsal Canada Inc.

“**NDA**” means a non-disclosure agreement in form and substance satisfactory to the Monitor and the CRO, which will inure to the benefit of that party or parties who ultimately complete and close a Successful Bid.

“**Outside Date**” means July 29, 2016, or such later date as may be agreed to by the Applicant and the Monitor, in consultation with the Lender.

“**Phase 1 LOI Deadline**” is defined in paragraph 16.

“**Phase 1 Data Room**” is defined in paragraph 15.

“**Phase 2**” is defined in paragraph 22.

“**Phase 2 Bid Deadline**” is defined in paragraph 27.

“**Phase 2 Data Room**” is defined in paragraph 26.

“**Potential Bidder**” is defined in paragraph 10.

“**Property**” means all of property, assets and undertakings relating to BM.

“**Qualified Bid**” means: an offer or combination of offers, in the form of a JSN Group Refinancing Proposal, a Reinvestment Proposal, and/or a BM Sale Proposal that the Monitor determines meets the requirements in paragraph 28 and is approved by the Lender.

“**Qualified Bidder**” is defined in paragraph 11.

“**Qualified LOI**” is defined in paragraph 17.

“**Successful Bid**” is defined in paragraph 33.

“**Teaser Letter**” is defined in paragraph 5.

### Supervision of the RISP

2. The Initial Order and the RISP shall exclusively govern the process for soliciting and selecting bids in connection with all Potential Transactions.
3. The Monitor will supervise, in all respects, the RISP and any Potential Transactions. BM is required to assist and support the efforts of the Monitor as provided for herein and in addition, each of the members of the JSN Group have also agreed to provide similar support and assistance. In the event that there is disagreement or clarification required as to the interpretation or application of this RISP or the responsibilities of the Monitor hereunder, the Court will have jurisdiction to hear such matters and provide advice and directions, upon application of the Monitor, BM, the other members of the JSN Group or the Lender.

For the avoidance of doubt, with respect to the Monitor's role in regards to the RISP, the terms of the Initial Order concerning the Monitor's rights, duties and protections in this CCAA proceeding shall govern.

#### **Refinancing, Investment and Sale Opportunity**

4. Two separate confidential information memoranda (the "**Confidential Information Memoranda**") describing the opportunities to: (i) invest in BM and/or JSN, and/or refinance all or part of the Credit Facilities of the JSN Group (the "**Confidential Refinancing Information Memorandum**") and (ii) acquire all or a portion of the Property (the "**Confidential Sale Information Memorandum**"), will be made available to Qualified Bidders. The Monitor will work with the relevant members of the JSN Group to prepare the Confidential Information Memoranda. Prior to being provided with either of the Confidential Information Memoranda, Qualified Bidders shall be required to declare which Potential Transaction they wish to pursue and will be provided with the corresponding Confidential Information Memoranda. Qualified Bidders may consider more than one Potential Transaction if, in the discretion of the Monitor, they have the capabilities to do so and the Lender approves.

#### **Solicitation of Interest and Publication Notice**

5. The Monitor (with the assistance of BM, the other members of the JSN Group, the Lender and their respective advisors) will prepare a list of parties that may have interest in Potential Transactions (the "**Known Potential Bidders**"). Concurrently, the Monitor, BM, the other members of the JSN Group and their respective advisors, have prepared initial offering summaries (the "**Teaser Letters**") notifying Known Potential Bidders of the existence of the Solicitation Process and inviting the Known Potential Bidders to express their interest in accordance with the terms of the RISP.
6. Commencing upon the granting of the Initial Order, BM and the other members of the JSN Group, under the supervision of the Monitor, shall distribute the Teaser Letters to the Known Potential Bidders, as well as a copy of the RISP and a draft form of NDA.
7. As soon as reasonably practicable after the granting of the Initial Order, but in any event no more than 2 Business Days after the issuance of the Initial Order, the Monitor will cause a notice of the RISP and such other relevant information which the Monitor, in consultation with the CRO and the Lender, considers appropriate, to be posted to a website maintained by the Monitor.

#### **"As Is, Where Is"**

8. All Potential Transactions will be on an "*as is, where is*" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, BM, any member of the JSN Group, the Lender or any of their respective agents or estates, except to the extent set forth in the definitive sale, investment or refinancing agreement executed with a Successful Bidder.

### Free Of Any And All Claims and Interests

9. In the event of a sale of all or a portion of the Property, all of the rights, title and interests of BM in and to the Property (but not the Lender's interests in the proceeds of sale) to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to such Court orders as may be desirable, except to the extent otherwise set forth in the definitive sale, investment or refinancing agreement executed with a Successful Bidder.

### Participation Requirements

10. In order to participate in the RISP, each party (a "**Potential Bidder**") must deliver to the Monitor at the address specified in **Schedule "A"** hereto (including by email):
  - (a) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the principals of the Potential Bidder and which Potential Transaction the Potential Bidder wishes to pursue; and
  - (b) an executed NDA which shall include, among other things, a "standstill" provision and provisions whereby the Potential Bidder agrees to accept and be bound by the provisions contained herein.
11. A Potential Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Monitor in its reasonable business judgement, in consultation with the CRO and the Lender, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate a Potential Transaction on or before the Outside Date will be deemed a "**Qualified Bidder**", and will be promptly notified of such determination by the Monitor. In no event shall the Lender constitute a Qualified Bidder.
12. A bid may, at the option of the Qualified Bidder and subject to the approval of the Monitor and the Lender pursuant to section 4 herein, involve, among other things, one or more of the following: a JSN Group Refinancing Proposal, a Reinvestment Proposal, or a BM Sale Proposal (which, if appropriate, may be achieved or implemented through a plan of compromise or arrangement pursuant to the CCAA or any corporate or other applicable legislation).
13. At any time during Phase 1 or Phase 2, the Monitor may, in its reasonable business judgment, and with the consent of the Lender, recommend to the CRO that a Qualified Bidder be eliminated from the RISP. If the CRO accepts the Monitor's recommendation, such bidder will be eliminated from the RISP and will no longer be a Qualified Bidder for the purposes of this RISP. If the CRO does not accept the Monitor's recommendation, the Monitor will seek advice and directions of the Court.

## RISP – PHASE 1

### Phase 1 Initial Timing

14. For a period of 30 days following the date of the Initial Order (“Phase 1”), the Monitor (with the assistance of BM and the JSN Group in accordance with this RISP) will solicit non-binding indications of interest in the form of non-binding letters of intent (“LOIs”) from Qualified Bidders who may be interested in any of the Potential Transactions.

### Due Diligence

15. The Monitor will provide each Qualified Bidder with a copy of the applicable Confidential Information Memorandum and access to an electronic data room of preliminary due diligence information for Qualified Bidders (the “Phase 1 Data Room”). The Monitor, BM, members of the JSN Group and the Lender make no representation or warranty as to the information (i) contained in the Confidential Information Memoranda or either the Phase 1 Data Room or the Phase 2 Data Room (as defined below), (ii) provided through the due diligence process in Phase 1 or Phase 2 or (iii) otherwise made available, except to the extent expressly contemplated in any definitive sale, investment or refinancing agreement with a Successful Bidder executed and delivered by BM or other members of the JSN Group, as applicable.

### Non-Binding Letters of Intent from Qualified Bidders

16. A Qualified Bidder that wishes to pursue a Potential Transaction must deliver an LOI to the Monitor at the addresses specified in Schedule “A” hereto (including by email), so as to be received by it not later than 5:00 PM (Eastern Daylight Time) on or before 30 days following the date of the Initial Order, unless such day is not a Business Day, in which case, on the next Business Day (the “Phase 1 LOI Deadline”). The Monitor shall deliver all submitted LOIs to the Lender and the CRO.
17. An LOI so submitted will be considered a qualified LOI (a “Qualified LOI”) only if:
  - (a) the LOI is submitted on or before the Phase 1 LOI Deadline by a Qualified Bidder;
  - (b) it contains an indication of whether the Qualified Bidder’s LOI is a:
    - (i) JSN Group Refinancing Proposal;
    - (ii) Reinvestment Proposal; and/or a
    - (iii) BM Sale Proposal.
  - (c) in the case of a BM Sale Proposal, it identifies or contains the following:
    - (i) the ‘headline’ purchase price range in Canadian dollars, including details of any liabilities to be assumed by the Qualified Bidder;

- (ii) the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the CRO, the Lender and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction;
  - (iv) the structure and financing of the transaction (including, but not limited to, the sources of financing of the purchase price, preliminary evidence of the availability of such financing, steps necessary and associated timing to obtain such financing and any related contingencies, as applicable);
  - (v) any anticipated corporate, unit holder, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vi) specific statements concerning the treatment of the operations of BM, including but not limited to employees, real estate leases and supplier relationships;
  - (vii) specific additional due diligence required to be conducted during Phase 2, if any;
  - (viii) any assumptions with respect to the Business' working capital requirements which impact the BM Sale Proposal;
  - (ix) all conditions to closing that the Qualified Bidder may wish to impose; and
  - (x) any other terms or conditions of the BM Sale Proposal which the Qualified Bidder believes are material to the transaction;
- (d) in the case of a Reinvestment Proposal, it identifies the following:
- (i) a detailed description of the structure of the transaction including a preliminary estimate of its sources and uses;
  - (ii) the aggregate amount of equity and debt investment to be made in the Business in Canadian dollars (including the sources of such capital, preliminary evidence of the availability of such capital and steps necessary and associated timing to obtain the capital and any related contingencies, as applicable);
  - (iii) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels,

- “leverage ratios”, cashflow levels, debt service fees, interest or dividend rates, borrowing base calculations, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
- (iv) equity, if any, to be allocated to the secured and unsecured creditors of BM and/or JSN, as applicable;
  - (v) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the CRO and the Lender and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder’s financial or other capabilities to consummate the transaction
  - (vi) any anticipated corporate, unitholder, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vii) specific statements concerning the treatment of the operations of BM and/or JSN, as applicable, including but not limited to employees, real estate leases and supplier relationships;
  - (viii) specific additional due diligence required to be conducted during Phase 2, if any;
  - (ix) all conditions to closing that the Qualified Bidder may wish to impose; and
  - (x) any other terms or conditions of the Reinvestment Proposal which the Qualified Bidder believes are material to the transaction;
- (e) in the case of a JSN Group Refinancing Proposal, it identifies the following:
- (i) a detailed description of the structure of the transaction, including whether the JSN Group Refinancing Proposal applies to all or part of the Credit Facilities, including a preliminary estimate of its sources and uses;
  - (ii) the aggregate amount of debt to be refinanced in Canadian dollars (including the sources of such capital, preliminary evidence of the availability of such capital and steps necessary and associated timing to obtain the capital and any related contingencies, as applicable);
  - (iii) the underlying assumptions regarding the refinancing (including “leverage ratios”, cashflow levels, debt service fees, interest rates, borrowing base calculations, amortization, redemption, prepayment or repayment attributes and any other material attributes of the investment);

- (iv) specific indication of the sources of capital for the Qualified Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Monitor, the CRO and the Lender and each of their respective advisors to make a reasonable business or professional judgment as to the Qualified Bidder's financial or other capabilities to consummate the transaction;
  - (v) any anticipated corporate, unitholder, shareholder, internal or regulatory approvals required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (vi) specific additional due diligence required to be conducted during Phase 2, if any;
  - (vii) all conditions to closing that the Qualified Bidder may wish to impose; and
  - (viii) any other terms or conditions of the JSN Group Refinancing Proposal which the Qualified Bidder believes are material to the transaction;
- (f) in the case of any Potential Transaction, it contains such other information as reasonably requested by the Monitor or the Lender, in consultation with the CRO; and
- (g) the purchase price or funds to be invested or refinanced, as assessed pursuant to paragraph 17 hereof, are in an amount that is deemed by the Monitor, exercising its reasonable business judgment, in consultation with the CRO, and with approval of the Lender, to be sufficient, when considered in addition with all of the factors in paragraph 17 hereof, to be a Qualified LOI.

18. The Monitor, in consultation with the CRO, and with the Lender's consent, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Potential Transaction shall be subject to the approval of the Court (to the extent that the Court has jurisdiction to ratify the Potential Transaction) and the requirement of approval of the Court may not be waived.

**Assessment of Qualified LOIs and Continuation or Termination of RISP**

19. Within 3 Business Days following the Phase 1 LOI Deadline, or such later date as may be determined by the Monitor, with the Lender's consent, the Monitor will, in consultation with the CRO and the Lender, assess the Qualified LOIs received during Phase 1, if any, and will determine whether there is a reasonable prospect of obtaining a Qualified Bid. For the purpose of such consultations and evaluations, the Monitor or the Lender, in consultation with the CRO, may request clarification of the terms of Qualified LOIs.
20. In assessing the Qualified LOIs, the Monitor, following consultation with the CRO and the Lender, will consider, among other things, the following:

- (a) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash consideration;
  - (b) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction;
  - (c) the conditions to closing of the proposed transaction; and
  - (d) the estimated time required to complete the proposed transaction and whether, in the Monitor's reasonable business judgment, it is reasonably likely to close on or before the Outside Date.
21. If one or more Qualified LOIs are received, the Monitor, exercising its reasonable business judgment and following consultation with the Lender, will, if appropriate to do so, recommend to the CRO that the RISP should continue into Phase 2 pursuant to these RISP procedures for a further period of time as agreed upon between the CRO and the Lender.
22. If no Potential Transaction proposal is a Qualified LOI, the Monitor will have the discretion, subject to the Lender's approval, to continue the RISP into Phase 2 in accordance with these RISP procedures, if in its reasonable business judgement, the Monitor believes that in continuing into Phase 2, there is a reasonable prospect that one or more Potential Transaction proposals may become Qualified Bids.
23. At any time during Phase 2, the Monitor, in consultation with the CRO and the consent of the Lender, may extend Phase 2 for any period of time deemed appropriate.
24. If the Monitor, after consultation with the CRO and the Lender, determines that (a) no Qualified LOI has been received, and (b) there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the RISP moving to Phase 2, (i) the Monitor, BM, another member of the JSN Group or the Lender may apply to the Court for further advice and directions including with respect to the termination of the RISP; (ii) the Lender may terminate the RISP; and/or (iii) the Lender may apply to the Court for approval of a bid.
25. If: (a) one or more Qualified LOIs are received; and (b) the Monitor, in its reasonable business judgment, in consultation with the CRO and the Lender, determines that another Qualified Bidder's LOI has a reasonable prospect of becoming a Qualified Bid, the Monitor, with the consent of the Lender, may designate such LOI as a Qualified LOI.

## PHASE 2

### Due Diligence

26. During Phase 2, each Qualified Bidder with a Qualified LOI that is not eliminated from the RISP will be granted further access to such due diligence materials and information relating to the Property, the Business and the Credit Facilities as the Monitor, in its reasonable business judgment, determines is appropriate, including information or materials reasonably requested by Qualified Bidders, on-site presentation(s) by senior management of the JSN Group and the Monitor, facility tours and access to a Phase 2 data room (the



“Phase 2 Data Room”). In addition, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if the Monitor, determines such information to represent proprietary or sensitive competitive information.

**Final Bids from Qualified Bidders**

27. A Qualified Bidder that is not eliminated from the RISP and that wishes to pursue a Potential Transaction must deliver a final binding proposal (the “Final Bid”):

- (a) in the case of a BM Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;
- (b) in the case of a Reinvestment Proposal, a duly authorized and executed investment agreement in form and substance acceptable to the Monitor and the Lender, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; and/or
- (c) in the case of a JSN Group Refinancing Proposal, a duly authorized and executed refinancing agreement in form and substance acceptable to the Monitor and the Lender, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in **Schedule “A”** hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on a date to be determined by the Monitor, the Applicant and the Lender (the “Phase 2 Bid Deadline”). The Monitor shall deliver all submitted Final Bids to the Lender and the CRO.

28. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder who submitted a Qualified LOI on or before the Phase 1 LOI Deadline; and (b) the Final Bid complies with, among other things, the following requirements:

- (a) it includes a letter stating that the bidder’s offer is irrevocable until the earlier of (a) the approval by the Court of a Successful Bid and (b) 10 days following the Phase 2 Bid Deadline, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;
- (b) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the CRO and with the Lender’s approval, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by its Final Bid;
- (c) in respect of a BM Sale Proposal, it details:

- (i) the Property to be included and any Property to be divested or disclaimed prior to closing and including, for greater certainty, the contracts and leases the bidder wishes to assume and reject with particularity, contains full details of the bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder); and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;
  - (ii) any liabilities to be assumed by the Qualified Bidder; and
  - (iii) the treatment of working capital;
- (d) it includes full details of the proposed number of employees of the Applicant who will become employees of the bidder (in the case of a BM Sale Proposal) or shall remain as employees of the Applicant and/or JSN, as applicable, (in the case of a Reinvestment Proposal) and, in each case, provisions setting out the terms and conditions of employment for continuing employees;
- (e) it is not conditional upon, among other things:
- (i) the outcome of unperformed due diligence by the Qualified Bidder; or
  - (ii) obtaining financing;
- (f) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;
- (g) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (h) it provides a timeline to closing with critical milestones;
- (i) it includes evidence, in form and substance reasonably satisfactory to the Monitor and the CRO, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (j) it is accompanied by a refundable deposit (the "Deposit") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the purchase price for a BM Sale Proposal, to be held and dealt with in accordance with the terms of this RISP;
- (k) it contains other information reasonably requested by the Monitor, the CRO and/or the Lender;
- (l) it is received by the Phase 2 Bid Deadline;

- (m) in the case of a BM Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement; and
- (n) in the case of a JSN Group Refinancing Proposal or a Reinvestment Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Business or the completeness of any information provided in connection therewith, except as expressly stated in the investment or refinancing agreement.

29. The Monitor, in consultation with the CRO and with the approval of the Lender, may waive compliance with any one or more of the requirements specified herein and deem such Final Bids to be Qualified Bids.

**Evaluation of Qualified Bids**

- 30. The Monitor, in consultation with the CRO and the Lender, will review each Qualified Bid as set forth herein. For the purpose of such consultations and evaluations, the Monitor may request clarification of the terms of any Final Bid.
- 31. Evaluation criteria with respect to a BM Sale Proposal may include, but are not limited to items such as: (a) the 'headline' purchase price and estimated net proceeds (including assumed liabilities and other obligations to be performed by the bidder); (b) the proposed treatment of working capital; (c) the firm, irrevocable commitment for financing the transaction; (d) the claims likely to be created by such bid in relation to other bids; (e) the counterparties to the transaction; (f) the terms of the proposed transaction documents; (g) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction; (h) planned treatment of stakeholders; (i) the assets included or excluded from the bid; (j) proposed treatment of the employees; (k) any transition services required from the Applicant post-closing and any related restructuring costs; (l) the likelihood and timing of consummating the transaction; and (m) the likelihood of the transaction resulting in the full repayment of the Lender Claims.
- 32. Evaluation criteria with respect to a JSN Group Refinancing Proposal or Reinvestment Proposal may include, but are not limited to items such as: (a) the amount of equity and debt investment and the proposed sources and uses of such capital and the estimated net proceeds; (b) the firm, irrevocable commitment for financing the transaction; (c) the debt

to equity structure post-closing; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (g) planned treatment of stakeholders; (h) proposed treatment of the employees (in the case of a Reinvestment Proposal); (i) the likelihood and timing of consummating the transaction; and (j) the likelihood of the transaction resulting in the full repayment of the Lender Claims.

33. If one or more Qualified Bids is received, the Monitor, exercising its reasonable business judgment and with approval of the Lender, may recommend to the CRO that the most favourable Qualified Bid be selected (or that more than one of the most favourable Qualified Bids be selected and aggregated) and that the Monitor, the CRO and their advisors negotiate and settle the terms of definitive closing documents (the "**Successful Bid(s)**").
34. The applicable member(s) of the JSN Group shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and the Lender to reject any or all Qualified Bids.

#### **Phase 2 Guidelines**

35. If the Monitor, after consultation with the CRO and the Lender, determines that no Qualified Bid has been received at the end of Phase 2, (a) any of the Lender, the Monitor or any member of the JSN Group may apply to the Court for further advice and directions, including with respect to the termination of the RISP; (b) the Lender may terminate the RISP; and/or (c) the Lender may apply to the Court for approval of a bid.

#### **Approval Motion for Successful Bid(s)**

36. The Applicant will apply to the Court (the "**Approval Motion**") for an order approving the Successful Bid(s) and authorizing BM to enter into any and all necessary agreements with respect to the Successful Bid(s) and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid(s).
37. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Applicant. The Approval Motion may be adjourned or rescheduled by the Applicant or the Monitor, on consent of the Lender, without further notice by an announcement of the adjourned date at the Approval Motion, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond the Outside Date.
38. All Qualified Bids (other than the Successful Bid(s)) will be deemed rejected on the date of approval of the Successful Bid(s) by the Court.

## OTHER TERMS

### No Derogation

39. Nothing in this RISP shall affect the Lender's rights to exercise contractual or legal remedies, or to enter into, and seek Court approval for, any transaction with or relating to BM or any of its Affiliates or the Property, subject to the applicable stay provisions of the Initial Order.

### Deposits

40. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the RISP is terminated in accordance with these procedures.
41. If a Successful Bidder breaches its obligations under the terms of the RISP, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

### Approvals

42. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

### No Amendment

43. There will be no amendments to this RISP without the consent of the Monitor and the Lender (following consultation with the CRO) or, in the absence of consent, the approval of the Court.
44. This RISP does not, and will not be interpreted to, create any contractual or other legal relationship between BM, any member of the JSN Group and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with BM or a member of the JSN Group, as applicable. At any time during the RISP, the Monitor may, following consultation with the CRO, upon reasonable prior notice to the Lender, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

**SCHEDULE "A"**  
**ADDRESS FOR DELIVERIES AND NOTICES**

Jamie Belcher

Senior Director

Alvarez & Marsal Canada

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IN THE MATTER OF 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 BEN MOSS JEWELLERS WESTERN CANADA LTD.

APPLICANT

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDING COMMENCED AT  
TORONTO

INITIAL ORDER

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Lawyers for the Applicant

Matter No: 1172245





**TAB BB**



Attached is Exhibit "BB" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





**UNIQUE DESIGNS, INC.**

as Purchaser

and

**RICHTER ADVISORY GROUP INC. in its capacity as Court-appointed Receiver of J.S.N.  
JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ CORP. and ALWAYS &  
FOREVER FAMILY COLLECTION INC.**

as Vendor

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**OFFER TO PURCHASE**

August 1, 2016

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## OFFER TO PURCHASE

This irrevocable and binding offer to purchase is made as of August 1, 2016 by Unique Designs, Inc. (the "Purchaser") to J.S.N. Jewellery Inc. ("JSN"), J.S.N. Jewellery UK Limited ("JSN UK"), GMJ Corp. ("GMJ") and Always & Forever Family Collection Incorporated ("AFFC" and, together with JSN, JSN UK and GMJ, the "Vendors" and, each, a "Vendor").

### RECITALS:

- (a) The Vendors wish to sell substantially all of the assets used in the Business (as defined below) and to assign certain liabilities and the Purchaser has agreed to purchase such assets and assume such liabilities upon the terms and conditions contained in this Agreement.
- (b) The Vendors anticipate that Salus Capital Partners, LLC, in its capacity administrative and collateral agent under the Vendors' credit facilities ("Salus"), will make an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of Richter Advisory Group Inc. ("Richter") as receiver of, among others, the Vendors (the "Receiver") in order to, among other things, complete the transaction of purchase and sale contemplated by this Agreement (the "Transaction").
- (c) Upon the issuance of the Receivership Order and the Approval and Vesting Order (as such terms are defined below), it is intended that the Receiver will, pursuant to the Approval and Vesting Order, execute this Agreement on behalf of the Vendors and complete the Transaction.

consideration of the above and for other good and valuable consideration, the parties agree as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Definitions.

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

**"Agreement"** means this irrevocable and binding offer to purchase, including all schedules annexed hereto, as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**"Approval and Vesting Order"** means an approval and vesting order of the Court approving this Agreement and the Transaction, in a form acceptable to the Receiver and the Purchaser, authorizing and directing the Receiver to execute this Agreement and carry out the terms hereof and to complete the Transaction for and on behalf of the Vendors, and vesting in and to the Purchaser the Purchased Assets free and clear



of and from any and all Encumbrances and waiving compliance with the applicable provisions of the *Bulk Sales Act* (Ontario).

"Assigned Contracts/Memos" means all contracts, memos and arrangements relating to the Customers, but excluding any contract specifically excluded in writing by the Purchaser prior to Closing.

"BIA" means the *Bankruptcy and Insolvency Act* (Canada).

"Business" means the businesses operated by the Vendors, which consists of the wholesale importation and manufacturing of jewellery.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed for business in Toronto, Ontario or commercial bank are authorized or required by law to close in New York City, New York State.

"Closing Date" means the date that is one (1) Business Day after the date the Approval and Vesting Order is obtained or such other date as may be agreed to by the parties in writing.

"Cost Value" of any Consignment Inventory or Finished Goods means the direct costs to the Vendors of such Consignment Inventory or Finished Goods, as reflected in the financial records of the Vendors in the Ordinary Course, plus (if not so reflected), any import costs including freight, import Taxes and brokerage fees.

"Court Order" means an order of the Court.

"Customers" mean those customers of the Vendors listed on Schedule "A" hereto.

"Encumbrances" means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, license, right of first refusal or first offer, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant, execution, levies, or other financial or monetary claims or encumbrances of any nature (whether at law or equity), and any contract, option, right or privilege (whether by Law, contract or otherwise) capable of becoming any of the foregoing.

"Governmental Entity" means: (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality, whether international, multinational, national, federal, provincial, state, county, municipal, local, or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

"Intellectual Property" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and

continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications, sketches, trade dress, waxes, molds, models, samples, routers, bills of materials and integrated circuit topographies; (vi) trade names, business names, corporate names, Data Universal Numbering System numbers, vendor numbers, SKU numbers, domain names, website names and URLs, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, service marks and the goodwill associated with any of the foregoing; (vii) information with respect to transactions between the Vendors and Customers other than as required for the ongoing collection by the Vendors or the Receiver of existing accounts receivable from such Customers; and (viii) any other intellectual property and industrial property.

"Laws" means any principle of common or civil law and all applicable: (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and by-laws; (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity; and (iii) to the extent that they are treated as binding by the Governmental Entity, have the force of law, policies, guidelines, notices and protocols of any Governmental Entity.

"Ordinary Course" means, with respect to the Vendors, an action consistent with the past practices of the Vendors prior to the date of the Receivership Order and taken in the ordinary course of the normal day-to-day business and operations of the Vendors, provided that such action is in compliance, in all material respects, with applicable Laws (provided it is acknowledged by the Purchaser that the Vendors will not be purchasing inventory following execution of this Agreement).

"Person" includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Entity) or any other entity, whether or not having legal status.

"Receivership Order" means the Court Order anticipated to be made upon application of Salus under subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*, for the appointment of Richter as receiver of all of the assets, undertakings and properties of the Vendors, 2373138 Ontario Inc. and P.M.R. Inc.

"Tax" means: (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth,

environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

"Termination Date" means August 15, 2016.

"Time of Closing" means 10:00 a.m. (Toronto time) on the Closing Date.

**Section 1.2 Other Defined Terms.**

In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Section:

TERM	REFERENCE
"AFFC"	Appearances
"Amended Bill of Sale"	Section 9.4(a)
"Assumed Liabilities"	Section 3.1
"Ben Moss"	Section 2.2
"BIA"	Recitals
"Bill of Sale"	Section 9.2(c)
"Closing"	Section 9.1
"Consent Required Contract"	Section 2.3
"Consignment Inventory"	Section 2.1(a)
"Consignment Inventory Reconciliation"	Section 4.3
"Consignment Inventory Schedule"	Section 4.3
"Court"	Recitals
"Customer Transaction Records"	Section 2.1(e)
"Employees"	Section 3.2(2)(b)
"Escrow Amounts"	Section 4.2(b)(iii)
"Escrow Termination Date"	Section 4.2(b)(i)
"ETA"	Section 5.1
"Excluded Assets"	Section 2.2
"Finished Goods"	Section 2.1(c)
"GMJ"	Appearances
"IP Assignment Agreements"	Section 8.2(4)

TERM	REFERENCE
"JSN" .....	Appearances
"JSN UK" .....	Appearances
"Letter of Intent" .....	Section 4.1(1)
"Notice" .....	Section 11.1
"Open Orders" .....	Section 2.1(d)
"Purchase Assets" .....	Section 2.1
"Purchase Price" .....	Section 4.1
"Purchaser" .....	Appearances
"Receiver" .....	Recitals
"Receiver's Certificate" .....	Section 9.1(3)
"Receivership Order" .....	Recitals
"Richter" .....	Recitals
"Salus" .....	Recitals
"Transaction" .....	Recitals
"Transfer Taxes" .....	Section 5.2
"Vendors" and "Vendor" .....	Appearances

### Section 1.3 Date for Any Action.

If the date on which any action is required to be taken hereunder by a party is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

### Section 1.4 Gender and Number.

Any reference in this Agreement to gender includes all genders. Words importing the singular number only shall include the plural and vice versa.

### Section 1.5 Headings, etc.

The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

### Section 1.6 Currency.

All references in this Agreement to dollars or to \$ are expressed in currency of the United States of America unless otherwise specifically indicated.

### Section 1.7 Certain Phrases, etc.

In this Agreement (i) the words "including", "includes" and "include" mean "including (or includes or include) without limitation", and (ii) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". Unless otherwise specified, the words "Article" and

"Section" followed by a number mean and refer to the specified Article or Section of this Agreement.

**Section 1.8 Schedules.**

The following Schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.

Schedule	Customers
"Section 1.1"	
Schedule	Intellectual Property
"Section 2.1(b)"	
Schedule	Consignment Inventory Schedule
"Section 4.3" Error! Reference source not found.Error! Reference source not found.Error! Reference source not found.	

**ARTICLE 2  
PURCHASED ASSETS**

**Section 2.1 Purchased Assets.**

Subject to the terms and conditions of this Agreement, the Receiver agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Receiver, on the Closing Date, effective as of the Time of Closing, or such later time as is contemplated by this Agreement, the following assets relating to or used in connection with the operation of the Business (collectively, the "Purchased Assets"), all free and clear of all Encumbrances:

- (a) subject to Section 2.2 of this Agreement, all of the Vendors' reconciled and verified inventory which is, as at the Closing Date, on consignment with the Customers (the "Consignment Inventory");
- (b) subject to Section 2.2 of this Agreement, all of the Intellectual Property owned by the Companies including, without limitation, that Intellectual Property detailed on Schedule "Section 2.1(b)" to this Agreement;
- (c) all finished goods on hand or with Customers relating to Open Orders, and certain finished goods on hand not relating to Open Orders that are identified by the Purchaser, in its sole discretion, prior to Closing (collectively, the "Finished Goods");
- (d) all open customer orders, including memo orders, and any corresponding open orders with vendors for goods required to fill such customer orders (the "Open Orders");

- (e) subject to Section 2.2 of this Agreement, all documents and records with respect to transactions between the Vendors and Customers ("Customer Transaction Records"); and
- (f) the Assigned Contracts/Memos except to the extent rights thereunder are required to collect on or enforce accounts receivable that are Excluded Assets.

### Section 2.2 Excluded Assets.

The Purchased Assets shall not include any of the following (collectively, the "Excluded Assets"):

- (a) any assets not expressly enumerated in Section 2.1 including, without limitation, cash, cash equivalents, accounts receivable, deposits, loose diamonds on hand and, subject to Section 2.1(c), any and all goods not relating to Open Orders;
- (b) any inventory held by the Companies' affiliate, Ben Moss Jewellers Western Canada Ltd. ("Ben Moss") on consignment or memo from the Vendors (which, in such circumstances, shall not form part of the Consignment Inventory);
- (c) any contracts or agreements that are not Assigned Contracts/Memos; and
- (d) any customer lists, books and records, telephone numbers or information technology system required for ongoing monitoring and evaluation, collection of accounts receivable and/or the marketing and sale of other Excluded Assets, whether by the Vendors, by the Receiver or by Salus, including, without limitation, any Customer Transaction Records that are so required.

### Section 2.3 Consent Required Contracts

In the event that there are any Assigned Contracts/Memos which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them (each a "Consent Required Contract"):

- (a) if any such consents, approvals or waivers therefor have not yet been obtained as of the Closing Date, then nothing in this Agreement will be construed as an assignment of any such Consent Required Contract and the Purchaser shall have no liability or obligation whatsoever in respect of any such Consent Required Contract;
- (b) until Closing, the Vendors and, upon its appointment, the Receiver shall use commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendors and Receiver in obtaining any such consent, approval or waiver; and

- (c) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

**ARTICLE 3  
ASSUMED LIABILITIES**

**Section 3.1 Assumed Liabilities.**

Subject to the Closing, and except for the Excluded Liabilities, the Purchaser agrees to assume, as of the Time of Closing or such other later time as is stipulated below, all of the Vendors' obligations and liabilities (and no other obligations or liabilities) relating to (collectively, the "Assumed Liabilities");

- (a) the Assigned Contracts/Memos arising and accruing in respect of the period after the Time of Closing and not related to any default existing at, prior to or as a consequence of Closing; and
- (b) any other liability which the Purchaser agrees in writing to assume on or before the Closing Date.

**Section 3.2 Excluded Liabilities.**

- (1) Other than the Assumed Liabilities, the Purchaser shall not assume and shall have no obligation to discharge, perform or fulfill any liability or obligation of the Vendors or in connection with the Purchased Assets, whether known, unknown, direct, indirect, absolute, contingent or otherwise.
- (2) Without limiting the generality of Section 3.2(1), the Purchaser shall not assume and shall not have:
  - (a) any obligation in respect of any of the Excluded Assets including, without limitation, any contract to which an Vendor is a party that is not an Assigned Contract/Memo;
  - (b) any obligations or liabilities in respect of any current or former employees of the Vendors (the "Employees"); or
  - (c) except as expressly provided herein, any liabilities, obligations or assessments of the Vendors for Taxes other than Transfer Taxes payable by the Purchaser pursuant to Section 5.2.

**ARTICLE 4  
PURCHASE PRICE**

**Section 4.1 Purchase Price and Deposit.**

- (1) The Receiver hereby acknowledges receipt from the Purchaser of a deposit (the "Deposit") of [REDACTED] paid to Richter, in trust, on June 18, 2016 pursuant to the

terms of a Letter of Intent concerning the Transaction dated July 16, 2016 between the Purchaser, JSN and Salus (the "Letter of Intent"), which Deposit is and shall continue to be held in a non-interest-bearing account. The Deposit will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price. If the Closing does not occur by the Termination Date due to either a breach by the Vendors or the Receiver or the failure of the Court to issue the Approval and Vesting Order, the full amount of the Deposit together with all accrued interest accrued thereon shall be immediately returned to the Purchaser. In the event that this Agreement is accepted by the Receiver and the Closing does not occur as a result of a breach by the Purchaser, the Deposit will be able to be retained as liquidated damages and used by the Receiver in accordance with a Court Order. Such liquidated damages shall be the Receiver's sole and exclusive remedy for any such breach by the Purchaser of its representations, warranties or covenants under this Agreement.

- (2) The consideration payable by the Purchaser to the Receiver for the Purchased Assets is the sum of the following (the "Purchase Price"), exclusive of Transfer Taxes:
- (a) █████ of the Cost Value of the Consignment Inventory, reconciled in accordance with Section 4.3 of this Agreement; plus
  - (b) █████ in respect of the Intellectual Property; plus
  - (c) █████ of the Cost Value of the Finished Goods, as counted in accordance with Section 8.1(1) of this Agreement.

In addition, the Purchaser will assume the Assumed Liabilities.

- (3) In the case of any dispute over the Cost Value of either any Consignment Inventory or any Finished Goods, the dispute will be referred for determination by a senior audit partner at the Toronto office of PricewaterhouseCoopers Inc. chosen by the managing partner of such office (the "Independent Auditor"). The parties will instruct the Independent Auditor to consider only those items and amounts as to which the parties have not resolved their disagreement and to conduct such hearings as it considers necessary to resolve the disagreement between the parties. The Receiver will furnish, or cause to be furnished, to such Independent Auditor such documents and information related to the items and amounts in dispute as the arbitrator may request and as are available. The costs of the Independent Auditor will be borne by the party losing the majority of the amount at issue.

#### **Section 4.2 Payment of Purchase Price.**

The Purchase Price shall be satisfied by the Purchaser as follows:

- (a) the Deposit shall be applied on Closing in partial satisfaction of the Purchase Price;



- (b) the balance of the Purchase Price (net of the Deposit) shall be paid within two (2) Business Days following completion of the Consignment Inventory Reconciliation pursuant to Section 4.3, by wire transfer of immediately available funds as follows:
- (i) [REDACTED] into escrow with the Receiver, to be held until the date that is three (3) months after Closing Date (the "Escrow Termination Date"), to be applied to the Purchaser's professional legal costs in defending any legal action based on claims to copyrights forming part of the Intellectual Property sold under this Agreement, where such action is commenced by Joseph Shilon or any of the Vendors' affiliates controlled by Joseph Shilon (including Utopia Jewellery Co., Utopia Diamond Inc. and Global Diamonds (G.D.) Limited);
  - (ii) [REDACTED] into escrow with the Receiver, to be held until the Escrow Termination Date, to be applied to the Purchaser's losses (including any professional legal costs) relating to any legal action brought by an unsecured trade creditor of either JSN UK or GMJ, attacking the Transaction as a bulk sale, settlement, transfer at undervalue, fraudulent conveyance or other similar reviewable transaction; and
  - (iii) the balance of the Purchase Price, net of the Deposit and the amounts described in Section 4.2(b)(i) and Section 4.2(b)(ii) above (collectively, the "Escrow Amounts") to the Receiver, upon delivery to the Purchaser by the Receiver of the Amended Bill of Sale if required pursuant to Section 9.4(a) hereof; and
- (c) any portion of the Escrow Amounts remaining in escrow with the Receiver on the Escrow Termination Date that is not subject to a claim having been made by the Purchaser shall be paid over to the receivership estate upon prior written consent of the Purchaser, such consent not to be unreasonably withheld.

In fulfilling its role as agent of the Escrow Amounts, the Receiver shall have all the rights and protections that shall be accorded to it under the Receivership Order. The Receiver shall be permitted to seek the advice and direction of the Court in the case of any dispute over the release of the Escrow Amounts.

**Section 4.3 Consignment Inventory Reconciliation.** The Purchaser and the Receiver shall make best efforts to reconcile and verify the schedule of Consignment Inventory provided by the Vendors to the Purchaser on July 18, 2016 in accordance with the Letter of Intent (the "Consignment Inventory Schedule") and attached to this Agreement as Schedule "Section 4.3" with the Customers by no later than September 13, 2016 (the "Consignment Inventory Reconciliation"). If the Purchaser gives written notice to the Receiver that it disputes the Consignment Inventory Schedule, on or before September 13, 2016, and the parties cannot reach agreement within five (5) Business Days after such notice of dispute is given, the dispute will be referred for determination the Court (in the Vendors' receivership proceedings). If the Purchaser does not give such notice of dispute on or before

September 13, 2016, the Consignment Inventory Schedule will be final and binding on all parties, it being understood that failure to obtain the cooperation of any Customer to the reconciliation of any Consignment Inventory with such Customer is a legitimate basis for the Purchaser to provide a notice of dispute in respect of such Consignment Inventory.

**Section 4.4 Allocation of Purchase Price.** The Receiver agrees that the Purchase Price shall be allocated in accordance with an allocation to be delivered by the Purchaser to the Receiver, acting reasonably, no later than the date specified in Section 4.2(b). The Receiver shall not make any filing or registration of any allocation of such amount among the Purchased Assets, whether in a Tax return, financial statement or otherwise, unless such allocation has been approved in advance in writing by the Purchaser.

## **ARTICLE 5 TAX MATTERS**

### **Section 5.1 ETA Election.**

The Purchaser and the Receiver shall jointly elect under subsection 167(1) of the *Excise Tax Act* (Canada) (the "ETA"), if available, in the form prescribed for the purposes of such provision, in respect of the sale and transfer of the Purchased Assets and the Purchaser shall file such elections with the applicable tax authorities within the time and in the manner required by the applicable Law.

### **Section 5.2 Transfer Taxes.**

Subject to any available election or exemption contemplated by Section 5.1, the Purchaser shall be liable for and shall pay all federal and provincial sales taxes and all other similar Taxes or other like charges of any jurisdiction ("Transfer Taxes") (for greater certainty, excluding all income or capital taxes of the Vendors) properly payable by the Purchaser in connection with the transfer of the Purchased Assets by the Receiver to the Purchaser.

### **Section 5.3 Indemnity for Transfer Taxes.**

The Purchaser shall indemnify and hold the Receiver harmless from and against any taxes payable under the ETA or any other applicable Law and in any case any penalty or interest in respect thereof which may be payable by or assessed against the Receiver as a result of or in connection with the Receivers' failure to collect and remit the applicable taxes payable under the ETA or other applicable Law on the sale of the Purchased Assets to the Purchaser, including any Transfer Taxes assessed as a result of any failure or refusal by the responsible tax authority to accept any election made under Section 5.1 or on the basis that such election was inapplicable, invalid or not properly made.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES**

**Section 6.1 Receiver's Representations and Warranties.**

The Receiver represents and warrants as follows to the Purchaser at the date of this Agreement and at the Closing Date and acknowledge and confirm that the Purchaser is relying upon such representations and warranties in connection with the purchase of the Purchased Assets and the assumption of the Assumed Liabilities:

- (1) **Receivership Order.** To the knowledge of the Receiver, the Receivership Order has not been stayed, varied, set aside or appealed as of the time that the Receiver executed this Agreement, and no motion seeking any relief from the Receivership Order has been served on the Receiver as of the time that the Receiver executed this Agreement.
- (2) **Execution and Binding Obligation.** The Receiver has, pursuant to the Receivership Order and subject to the Approval and Vesting Order, good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the Transaction. This Agreement is enforceable against the Receiver in accordance with its terms. This Agreement has been duly executed and delivered by the Receiver and constitutes a legal, valid and binding agreement of the Receiver enforceable against it in accordance with its terms subject only to the Approval and Vesting Order and any limitation under applicable Laws.
- (3) **Registration.** JSN and AFFC are registrants under Part IX of the ETA and their registration numbers are 13716 4018 RT0001 and 85981 7678 RT0001, respectively.

**Section 6.2 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants as follows to the Receiver as at the date of this Agreement and at the Closing Date and acknowledges and confirms that the Receiver is relying on such representations and warranties in connection with the sale by the Receiver of the Purchased Assets:

- (1) **Incorporation and Qualification.** The Purchaser is a corporation duly incorporated and existing under the laws of the State of New York. The Purchaser has the power to enter into and perform its obligations under this Agreement.
- (2) **Corporate Authority.** The execution and delivery of and performance by the Purchaser of this Agreement and the consummation of the transactions contemplated by it have been authorized by all necessary corporate action on the part of the Purchaser.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding agreement of the Purchaser enforceable against it in accordance with its terms subject only to the Approval and Vesting Order and any limitation under applicable Laws relating to

- (i) bankruptcy, winding-up, insolvency, arrangement, fraudulent preference and conveyance, assignment and preference and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (4) **Investment Canada Act.** The Purchaser is a "WTO investor" within the meaning of the *Investment Canada Act*.
- (5) **Registration.** The Purchaser is, or prior to Closing will be, registered under Part IX of the ETA for purposes of any election to be made pursuant to Section 5.1.
- (6) **Brokers and Finders.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser.

### Section 6.3 Survival.

The representations and warranties contained in this Agreement survive the Closing and continue in full force and effect for a period of one year.

### Section 6.4 No Other Representations or Warranties of the Receiver; "As Is, Where Is".

- (1) The representations and warranties given by the Receiver in this Article 6 are the sole and exclusive representations and warranties of the Receiver in connection with this Agreement and the transactions contemplated by it. Except for the representations and warranties given by the Receiver in this Article 6, the Purchaser did not rely upon any statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied (by operation of law or otherwise), oral or written, legal, equitable, conventional, collateral or otherwise, regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith.
- (2) The Purchaser hereby acknowledges and agrees as follows:
- (a) Except as expressly provided herein, the Purchased Assets are being purchased on an "as is, where is" basis; and
- (b) Except as expressly set forth in this Agreement, the Receiver makes no representations, or warranties in favour of the Purchaser concerning the Purchased Assets, which the Purchaser acknowledges are being acquired on an "as is, where is" basis, whether express or implied, statutory or collateral, arising by operation of Laws or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Sale of Goods Act* (Ontario) or

other Laws do not apply to the Transaction and are hereby waived by the Purchaser.

- (c) Any materials provided to the Purchaser by the Receiver or its solicitors, agents, representatives and advisors are provided to the Purchaser without representation or warranty and the Purchaser will rely entirely and solely upon its own investigations and inspections and shall not rely on such materials or any other information furnished by the Receiver or any other person or entities on behalf of or at the direction of the Receiver in connection therewith;
- (d) Except as otherwise expressly provided for in this Agreement, the Vendors and the Receiver will have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Purchased Assets or the condition thereof;
- (e) The Receiver has no liability for, or obligation with respect to, any special, indirect, consequential, punitive or aggravated damages; and
- (f) The provisions of this Section 6.4 will survive Closing or the termination of this Agreement.

## ARTICLE 7 COVENANTS

### Section 7.1      Accounts.

The Purchaser shall not take any action which would in any way negatively interfere with or impact any Open Orders with customers and/or the collectability of the accounts receivable.

### Section 7.2      Actions to Satisfy Obligations.

The Receiver and the Purchaser agree to take all such actions as are within their respective control and shall use their respective commercially reasonable efforts to take, or cause to be taken, all other actions and make all such other filings and submissions, and obtain such authorizations, which are necessary or advisable in order to fulfil their respective obligations under this Agreement.

### Section 7.3      Access.

Subject to applicable Laws, until the Closing Date the Receiver shall (i) upon reasonable notice, permit the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records whether retained by the Receiver or otherwise, (B) all contracts and leases to which any of the Vendors are a party, and (C) the senior personnel of the Vendors, so long as the access does not unduly interfere with the ordinary conduct of the Business; and (ii) furnish to the Purchaser or its employees, agents,

counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser from time to time reasonably requests.

**Section 7.4 Access to Books and Records.**

For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will use its reasonable commercial effects, without any liability to the Receiver or the Vendors, to retain all original books and records relating to the Purchased Assets that are transferred to the Purchaser under this Agreement. So long as any such books and records are retained by the Purchaser pursuant to this Agreement, the Receiver or any bankruptcy trustee appointed in respect of the Vendors and their respective representatives shall have the right to inspect and to make copies (at their own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

**ARTICLE 8  
CONDITIONS OF CLOSING**

**Section 8.1 Conditions for the Benefit of both Parties.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date:

- (1) **Finished Goods Count.** The Vendors and the Purchaser shall have conducted a count of the Finished Goods by no later than the day that is one (1) Business Day prior to the date of the Receivership Order and the Approval and Vesting Order, in connection with which count, the Purchaser shall have been permitted to contact Customers, in the presence of the Vendors' Chief Restructuring Officer, for purposes of confirming the existence of the Open Orders relating to Finished Goods;
- (2) **No Court Orders.** No provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to this Agreement shall be in effect; and
- (3) **Approval and Vesting Order.** The Approval and Vesting Order shall have been issued and entered and shall not have been stayed, amended, appealed, modified, reversed or dismissed as at the Closing Date.

**Section 8.2 Conditions for the Benefit of the Purchaser.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Conduct of Business in the Ordinary Course.** From the date of the Letter of Intent, until the Date of Closing, (a) the Business shall have been conducted as it was being conducted on the date of the Letter of Intent, used commercially reasonable efforts to retain customers, suppliers and distributors and no transaction shall have been engaged in with respect to the Business which is inconsistent with the Business as it was conducted on the date of the Letter of Intent without the Purchaser's prior written consent; (b) no Purchased Assets shall have been disposed of outside of such course of business; (c) the terms governing Consignment Inventory shall not have been altered; (d) no agreement related to the operation of the Business shall have been entered into, amended, renewed or extended except on terms comparable to those in existence on the date of the Letter of Intent and otherwise which is inconsistent with the Business as being conducted on the date of the Letter of Intent; (e) no further inquiries or proposals from, or discussions or negotiations with, any person (other than the Purchaser) shall have been directly or indirectly, solicited initiated or encouraged, no non-public information shall have been provided to any person (other than the Purchaser), and no inquiries or proposals from any person (other than the Purchaser) shall have been considered on its merits, in each case where relating to any transaction involving the sale or issuance of any securities of the Vendors or the sale or other direct or indirect disposition of any assets of the Vendors (other than inventory sold only in the Ordinary Course); and (f) no further Consignment Inventory shall have been added without the consent of the Purchaser, such consent not to have been unreasonably withheld. Notwithstanding the foregoing, the entering into of this Agreement and the completion of the transactions contemplated herein, the making of an application or motion for the Receivership Order and for the Approval and Vesting Order, the issuance of the Receivership Order and the Approval and Vesting Order and the carrying out of the provisions in each of the foregoing Court Orders will not constitute or have constituted a breach of this Section 8.2(1).
- (2) **Access.** Subject to applicable Laws, from the date of this Agreement until the date of the Receivership Order, the Vendors shall have (i) upon reasonable notice, permitted the Purchaser and its employees, agents, counsel, accountants or other representatives, to have reasonable access during normal business hours to (A) the Purchased Assets, including all books and records, (B) all contracts and leases to which any of the Vendors are a party, and (C) the senior personnel of the Vendors, so long as such access would not have unduly interfered with the ordinary conduct of the Business; and (ii) furnished to the Purchaser or its employees, agents, counsel, accountants or other such representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser may have reasonably requested.
- (3) **Covenants.** The Receiver shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Vendors or the Receiver of the documents and instruments contemplated by Section 9.2.

- (4) **IP Assignments.** JSN, GMJ and JSN UK shall have each executed intellectual property assignment agreements in a form acceptable to the Purchaser assigning all of their rights in any Intellectual Property to the Purchaser upon Closing (together, the "IP Assignment Agreements").
- (5) **Discharge of Salus registrations.** Salus shall have executed discharges of any intellectual property registry registrations of the security interest which Salus currently holds in the Intellectual Property held by each of the Vendors and which, after Closing, Salus shall continue to hold in the proceeds of such Intellectual Property.

### **Section 8.3 Conditions for the Benefit of the Receiver.**

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed on or before the Closing Date, which are for the exclusive benefit of the Receiver and which may be waived, in whole or in part, by the Receiver in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing Date in all material respects, with the same force and effect as if such representations and warranties had been made on and as of such date;
- (2) **Covenants.** The Purchaser shall have fulfilled or complied with all covenants contained in this Agreement required to be fulfilled or complied with by it in all material respects at or prior to the Closing Date, including delivery by the Purchaser of the documents and instruments contemplated by Section 9.3; and
- (3) **Payment of the Purchase Price.** The Deposit shall have been applied in part payment of the Purchase Price in accordance with Section 4.2(a) and the Purchaser shall have delivered to the Receiver the undertaking contemplated in Section 9.3(d).

## **ARTICLE 9 CLOSING**

### **Section 9.1 General.**

- (1) The completion of the transactions of purchase, sale and assumption contemplated by this Agreement (the "Closing") shall take place at the offices of the Receiver's counsel, Fasken Martineau DuMoulin LLP, in Toronto, Ontario, on the Closing Date, at the Time of Closing, or at such other place as may be agreed upon in writing by the parties.
- (2) As soon as practicable following execution of this Agreement, it is expected that Salus will serve and file application materials for an application on seven (7) days' notice to any affected parties seeking the Receivership Order and the Approval and Vesting Order;



- (3) The parties hereby acknowledge and agree that the Receiver shall be entitled in accordance with the Approval and Vesting Order to file a certificate, substantially in the form attached to the Approval and Vesting Order (the "Receiver's Certificate"), with the Court upon receiving written confirmation from the Purchaser that all conditions of Closing have been satisfied or waived.

**Section 9.2 Receiver's Closing Deliveries.**

At the Closing, the Receiver shall execute and/or deliver or cause to be delivered to the Purchaser the following:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing, provided that the Receiver shall not be obliged to deliver any designs, samples, waxes, molds and models currently in the hands of third parties;
- (b) a true and complete copy of the Approval and Vesting Order, as entered by the Court;
- (c) an executed bill of sale in form acceptable to the Receiver and the Purchaser (the "Bill of Sale");
- (d) executed IP Assignment Agreements;
- (e) such executed Tax elections as are required pursuant to Article 5;
- (f) a true and complete copy of the Receiver's Certificate executed by the Receiver (such Receiver's Certificate to be filed with the Court by the Receiver following Closing and a copy of such filed Receiver's Certificate shall be delivered to the Purchaser promptly thereafter); and
- (g) such other documents as the Purchaser may require, acting reasonably.

**Section 9.3 Purchaser's Closing Deliveries.**

At the Closing, the Purchaser shall execute and/or deliver or cause to be delivered to the Receiver the following:

- (a) an executed Bill of Sale;
- (b) executed IP Assignment Agreements;
- (c) such executed Tax elections as are required pursuant to Article 5;
- (d) an undertaking with respect to the payment of the balance of the Purchase Price post-Closing;

- (e) a certificate of an officer of the Purchaser confirming that the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date;
- (f) a certificate of an officer of the Purchaser confirming that all conditions to Closing in its favour are either satisfied or waived; and
- (g) such other documents as the Receiver may require acting reasonably.

#### **Section 9.4 Receiver's Post-Closing Deliveries.**

As soon as possible following the Closing and in any event not later than the date or time contemplated herein, the Receiver shall execute and/or deliver or cause to be delivered to the Purchaser the following:

- (a) a letter to each Customer, on JSN letterhead, attaching a copy of the Approval and Vesting Order, advising of the Transaction including the sale of Intellectual Property hereunder, all in a form acceptable to the Purchaser; and
- (b) upon receipt of the payment contemplated by Section 4.2(b), an executed amended Bill of Sale to reflect any changes arising from the Consignment Inventory Reconciliation (the "Amended Bill of Sale").

#### **Section 9.5 Purchaser's Post-Closing Deliveries.**

As soon as possible following the Closing and in any event not later than the date or time contemplated herein, the Purchaser shall execute and/or deliver or cause to be delivered to the Receiver the following:

- (a) the payment contemplated by Section 4.2(b), when contemplated thereby;
- (b) an executed Amended Bill of Sale, if any, at the time contemplated in Section 9.4(b); and
- (c) a certificate and declaration of indemnity, in a form and substance satisfactory to the Receiver, acting reasonably, or delivery of payment of any applicable Transfer Taxes at the same time as the payment in (a) above.

### **ARTICLE 10 TERMINATION**

#### **Section 10.1 Termination of Agreement.**

This Agreement may, by notice in writing given prior to or on the Closing, be terminated:

- (a) by mutual consent of the Receiver and the Purchaser;

- (b) by the Purchaser or the Receiver if the Approval and Vesting Order shall fail, once granted, to be in full force and effect or shall have been amended, appealed, modified, reversed or dismissed without the prior written consent of the Purchaser; or
- (c) automatically if the Closing has not occurred by the end of the day on the Termination Date,

and may be revoked, as an offer, by the Purchaser if no Approval and Vesting Order is issued by the Termination Date or if the Receiver does not accept this Agreement by the Termination Date.

#### **Section 10.2 Effect of Termination.**

In the event that the Agreement is terminated in accordance with Section 10.1, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without liability to the Purchaser and the Receiver; provided however that in no event shall any termination of this Agreement relieve any party hereto of any liability for any willful or intentional breach of this Agreement by such party or affect the treatment of the Deposit as provided in Section 4.1.

### **ARTICLE 11 MISCELLANEOUS**

#### **Section 11.1 Notices.**

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a "Notice") must be in writing, sent by personal delivery, courier or electronic mail and addressed:

- (a) to the Receiver at:

Richter Advisory Group Inc.  
181 Bay Street, Suite 3320  
Toronto, Ontario M5J 2T3

Attention: Clark Lonergan  
Email: CLonergan@Richter.ca  
Fax: 416.488.3765

and with a copy to:

Fasken Martineau DuMoulin LLP  
333 Bay Street, Suite 2400  
Toronto, Ontario M5H 2T6

Attention: Stuart Brotman  
Email: sbrotman@fasken.com  
Fax: 416.364.7813

(b) to the Purchaser at:

Unique Designs, Inc.  
521 5<sup>th</sup> Avenue, Suite #820  
New York, New York  
10175

Attention: Amit Mehta  
Email: amit@sdilinc.com  
Fax: 212.297.1732

with a copy to:

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

Attention: Brian Pukier and Elizabeth Pillon  
Emails: BPukier@stikeman.com and LPillon@stikeman.com  
Fax: (416) 947-0866

A Notice is deemed to be given and received if sent by personal delivery, courier or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

#### Section 11.2 Assignment.

- (1) Except as provided in this Section 11.2, neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties.
- (2) Upon giving notice to the Receiver at any time on or prior to one Business Day prior to the date of the hearing for the Approval and Vesting Order, the Purchaser is entitled to assign this Agreement or any of its rights under this Agreement to any of its affiliates (as such term is defined in *National Instrument 45-106*) acceptable to the Receiver, acting reasonably.

**Section 11.3 Survival.**

Any provision of this Agreement which contemplates performance or the existence of obligations after the Closing Date shall not be deemed to be merged into or waived by the execution, delivery or performance of this Agreement or documents delivered in connection herewith or Closing, but shall expressly survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement and shall be binding upon the party or parties obligated thereby (including any trustee-in-bankruptcy appointed in respect of such party) in accordance with the terms of this Agreement.

**Section 11.4 Time of the Essence.**

Time is of the essence in this Agreement.

**Section 11.5 Enurement.**

This Agreement becomes effective and binding when executed by the Purchaser and the Receiver. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by either party without the prior written consent of the other party.

**Section 11.6 Entire Agreement.**

This Agreement and the other documents executed in connection herewith constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

**Section 11.7 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

**Section 11.8 Amendments.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Receiver and the Purchaser.

**Section 11.9 Further Assurances.**

From and after the Closing Date, each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets and the Assumed Liabilities to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

**Section 11.10 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, by any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 11.11 Governing Law.**

This Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**Section 11.12 Status of the Receiver.**

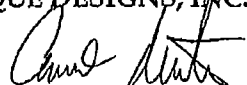
The Purchaser acknowledges and agrees that, in carrying out and completing the Transaction or exercising any rights, entitlement or benefits as vendor under this Agreement, Richter will be acting solely in its capacity as Receiver and not in its personal or corporate capacity and shall have no personal or corporate liability to the Purchaser or any permitted assigns.

**Section 11.13 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Agreement.

[signature page follow]

UNIQUE DESIGNS, INC.

By:   
Name: Amit Mehta  
Title: CEO

AGREED AND ACCEPTED by the undersigned this 1<sup>st</sup> day of August, 2016

RICHTER ADVISORY GROUP INC.  
solely in its capacity as Court-appointed  
Receiver of J.S.N. JEWELLERY INC.,  
J.S.N. JEWELLERY UK LIMITED, GMJ  
CORP. and ALWAYS & FOREVER  
FAMILY COLLECTION INC., and not in  
its personal capacity

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

Schedule "Section 1.1" - Customers



**J.S.N. Jewellery Inc.**  
**J.S.N Canada Customers - CDN\$**

- Ann-Louise Jewellers
- Assaly's Jewellery
- Austin Jewellers
- Bijouterie Lavigueur
- Bijouterie Luxedor Inc
- Bijouterie Prestige
- Bijouterie Soleil
- Bogarts Jewelry Ltd
- Carter's Jewellers
- Charm Diamond Centres
- Clowes Jewellers 1978 Ltd
- Cooks Jewellers
- Curry's Jewellers
- Diamonds of Detroit
- European Goldsmith Kelowna
- Excel Jewellers
- Fiancee Jewellers
- Fifth Avenue Jewellers
- Gem Bijou
- Gold Room
- Gold Rush
- Golden Tree Jewellers
- Griffin Jewellery Design Inc.
- Heinrichs Jewellery
- Independent Jewellers
- J G Jewellers
- J.K.Schmidt Jewellers
- Jewellery Box & Giftware
- Lawlor Goldsmith Shoppe
- Leon`s Jewellers
- Les Bijoutiers Doucet
- M&R Jewellery
- Mayhew Jewellers
- Prairie Gold Jewellery
- Preston Jewellers Ltd.
- Richardson's Jewellers
- Rochells Jewellers
- Royalty Goldsmiths Inc.
- Ryan Jewellers
- Savoy's Jewellers Ltd.
- Simon Jewellers

Sugold Jewellers  
Tany's Jewellers  
W.K.Chan Jewellers  
Watier Jewellers  
Wendt's

**J.S.N. Canada Related Party**

Always & Forever  
Ben Moss Jewellers  
Forever Jewellery Inc.

**J.S.N. Jewellery Inc.****J.S.N Canada Customers - US\$**

H.E. Murcock  
Duty Free World Inc.  
MJB Marketing

**GMJ - USA****GMJ USA Customers**

Ben Bridge  
Fred Meyer Jewelers  
Radial Inc.  
Rogers Enterprises Inc.  
Zale Corporation

**J.S.N. Jewellery Inc. - UK****J.S.N. UK Customers in various currencies****GBP Customers**

Brinnor Ltd (Eternity)  
Cirrus D  
CPM Goodwin  
DESIGN CENTRE  
Dualrange Ltd  
Dynasty  
Essardes Group  
F. Hinds Ltd.  
Fallers Jewellers

Fields of Dublin  
Fraser Hart  
Fraser Hart ( Warehouse)  
Goldsmiths Group  
Gus Jones  
Harmony Jewels  
Houlden Jewellers Limited  
James Porter  
John McKay Jewellers  
LMG Jewellery Claim Service  
Market Cross (Middlesbrough)  
Mortimer Management Group  
P.A. Jewellery  
Regency Jewels  
Tagore  
Whitmore Jwlr's Ltd. ( Neweys)

**USD Customers**

DIP Diffusione Italiana Prezio  
Galaxy Ice  
Kontinen Kultavirta

**Euro Customers**

MTTI Group

Schedule "Section 2.1(b)" - Intellectual Property

# Executive Summary Report

Print Date: Wednesday, June 15, 2016 - 11:09:34AM

Number of Selected Items: 31

## Search Parameters

### Search #1

**Owners:** J.S.N. & JEWELLERY\*  
 JSN & JEWELLERY\*  
 J & S & N & JEWELLERY\*  
 J\*S\*N\*JEWELLERY\*  
**Classes:** All  
**Indices:** Trademarks, Index Headings, Figurative Elements, Foreign Character Translations, Descriptions of Marks  
**Status:** Application, Registered, Active, Inactive  
**Type of Marks:** Word marks and design marks

## Data Sources

### 1 - CIPO 6/13/2016

✦ CIPO Trademark Database

Latest Date New Applications Made Available For Public Inspection: 6/6/2016 12:00:00 AM

## Category Summary

Name	Description
Uncategorized	These trademarks have not been categorized.

## Item Information

Item 1 of 31

#	Trademark	Reg #	App/Ser #	Status	Category
1	...nothing shines brighter	TMA785,166	1,469,404	REGISTERED/ENREGISTRÉE	
2	Always & Forever Family Collection	TMA722,722	1,369,345	REGISTERED/ENREGISTRÉE	
3	Blush Coloured Diamond Collection		1,714,793	DEFAULT - SEARCHED/EN DÉFAUT - A FAIT L'OBJET D'UNE RECHERCHE	
4	Bright Star		1,469,402	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
5	Canada Star		1,583,861	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
6	Canadian Floating Diamond		1,539,358	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
7	Canadian Ice Diamonds	TMA785,154	1,427,477	REGISTERED/ENREGISTRÉE	
8	Colour Couture Diamond Collection		1,714,794	ALLOWED/ADMISE	
9	Diamond Blossom Cut		1,621,752	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
10	Diamond Vibes Diamond Collection		1,705,838	ALLOWED/ADMISE	

#	Trademark	Reg #	App/Ser #	Status	Category
11	ELITE COLLECTION	TMA718,766	1,361,994	REGISTERED/ENREGISTRÉE	
12	Floating Diamond		1,539,353	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
13	Forever Designer Diamond Bridal Collec..		1,706,014	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
14	Forever Gold		1,551,803	ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)	
15	Forever Loved Diamond Collection		1,666,827	ALLOWED/ADMISE	
16	Halo Diamond Collection		1,503,153	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
17	Ice Beats Diamond Collection		1,705,833	ALLOWED/ADMISE	
18	LuLu Diamond & Gold Collection	TMA724,749	1,368,881	REGISTERED/ENREGISTRÉE	
19	My Diamonds - Diamond & Gold Collectio..		1,369,344	ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)	
20	Nature's best diamonds		1,613,171	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
21	Passionate Heart	TMA785,155	1,469,403	REGISTERED/ENREGISTRÉE	
22	Royal Princess Diamond Collections		1,651,861	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
23	Sempre Oro		1,551,802	ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)	
24	Shining Star Diamond		1,522,107	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
25	Soul Mates Diamond Collection		1,655,752	ALLOWED/ADMISE	
26	Starlight Diamond		1,522,106	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
27	the coolest diamonds on earth	TMA785,152	1,445,849	REGISTERED/ENREGISTRÉE	
28	The Diamond Blossom collections		1,613,176	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
29	The Elite Diamond Collection	TMA722,723	1,368,883	REGISTERED/ENREGISTRÉE	
30	The Love 100 Diamond		1,621,679	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	
31	Treasure Chest Event		1,613,175	ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36	

# Extended Preview Report

Print Date: Wednesday, June 15, 2016 - 11:09:49AM

Number of Selected Items: 31

## Search Parameters

**Search #1**

**Owners:** J.S.N. & JEWELLERY\*  
 JSN & JEWELLERY\*  
 J & S & N & JEWELLERY\*  
 J\*S\*N\*JEWELLERY\*

**Classes:** All

**Indices:** Trademarks, Index Headings, Figurative Elements, Foreign Character Translations, Descriptions of Marks

**Status:** Application, Registered, Active, Inactive

**Type of Marks:** Word marks and design marks

## Data Sources

1 - CIPO 6/13/2016

✦ CIPO Trademark Database

Latest Date New Applications Made Available For Public Inspection: 6/6/2016 12:00:00 AM

## Category Summary

Name	Description
Uncategorized	These trademarks have not been categorized.

## Item Information

Item 1 of 31

**1**                    **...nothing shines brighter**

**Category:** Uncategorized

**Status:** REGISTERED/ENREGISTRÉE

**Reg. #:** TMA785,156

**Reg. Date:** 16 déc/Dec 2010

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3

**Wares:** (1) 74/78 faceted specialty cut diamonds.

**Indices:** ...NOTHING SHINES BRIGHTER

**2**                    **Always & Forever Family Collection**

**Category:** Uncategorized

**Status:** REGISTERED/ENREGISTRÉE

**Reg. #:** TMA722,722

**Reg. Date:** 28 août/Aug 2008

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3

**Wares:** (1) White and/or yellow jewellery(including earrings, rings, bracelets, pendants and brooches) set with diamonds and/or precious and/or

**Indices:** semi- precious gems.  
ALWAYS & FOREVER FAMILY COLLECTION

**3 Blush Coloured Diamond Collection**

**Category:** Uncategorized  
**Status:** DEFAULT - SEARCHED/EN DÉFAUT - A FAIT L'OBJET D'UNE RECHERCHE  
**App. #:** 1,714,793  
**App. Date:** 11 fév/Feb 2015  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) White, yellow and rose gold, silver and platinum jewellery (including earrings, rings, pendants, bangles, bracelets, brooches) set with coloured and/or white diamonds and/or coloured precious and/or semi- precious gems.  
**Indices:** BLUSH COLOURED DIAMOND COLLECTION  
COLORED

**4 Bright Star**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,469,402  
**App. Date:** 12 fév/Feb 2010  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) 74/78 faceted specialty cut diamonds.  
**Indices:** BRIGHT STAR

**5 Canada Star**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,583,861  
**App. Date:** 27 juin/Jun 2012  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) White, yellow & rose jewellery(including earrings, rings, pendants, bracelets and brooches) set with Canadian diamonds and/or coloured precious and/or semi-precious gems  
**Indices:** CANADA STAR

**6 Canadian Floating Diamond**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,539,358  
**App. Date:** 11 août/Aug 2011  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) Specialty setting made of white gold, yellow gold, silver or platinum



to create the illusion that the gemstone which maybe a diamond, precious or semi-precious stone placed in a bezel or claw setting is floating.

**Indices:** CANADIAN FLOATING DIAMOND

**7 Canadian Ice Diamonds**

**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE

**Reg. #:** TMA785,154

**Reg. Date:** 16 déc/Dec 2010

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of** 64 JARDIN DRIVE, UNIT 7

**Owner(s):** CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) White, yellow & rose jewellery (including earrings, rings, pendants, bracelets and brooches) set with Canadian diamonds and/or coloured precious and/or semi-precious gems.

**Indices:** CANADIAN ICE DIAMONDS

**8 Colour Couture Diamond Collection**

**Category:** Uncategorized  
**Status:** ALLOWED/ADMISE

**App. #:** 1,714,794

**App. Date:** 11 fév/Feb 2015

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of** 7-64 JARDIN DRIVE

**Owner(s):** CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) White, yellow and rose gold, silver and platinum jewellery (including earrings, rings, pendants, bangles, bracelets, brooches) set with coloured and/or white diamonds and/or coloured precious and/or semi-precious gems.

**Indices:** COLOUR COUTURE DIAMOND COLLECTION  
COLOR

**9 Diamond Blossom Cut**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**App. #:** 1,621,752

**App. Date:** 09 avr/Apr 2013

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of** 64 JARDIN DRIVE, UNIT 7

**Owner(s):** CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) 104 facet diamond cut

**Indices:** DIAMOND BLOSSOM CUT

**10 Diamond Vibes Diamond Collection**

**Category:** Uncategorized  
**Status:** ALLOWED/ADMISE

**App. #:** 1,705,838

**App. Date:** 04 déc/Dec 2014

**Owner(s):** J.S.N. JEWELLERY INC.

**Address(es) of** 7-64 JARDIN DRIVE

**Owner(s):** CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery

(including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.  
**Indices:** DIAMOND VIBES DIAMOND COLLECTION

**11 ELITE COLLECTION**

**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE  
**Reg. #:** TMA718,766  
**Reg. Date:** 17 juil/Jul 2008  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3  
**Wares:** (1) Rings, pendants, bracelets, earrings, necklaces, and cuff links.  
**Indices:** ELITE COLLECTION

**12 Floating Diamond**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,539,353  
**App. Date:** 11 août/Aug 2011  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE  
 UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3  
**Wares:** (1) Specialty setting made of white gold, yellow gold, silver or platinum to create the illusion that the gemstone which maybe a diamond, precious or semi-precious stone placed in a bezel or claw setting is floating.  
**Indices:** FLOATING DIAMOND

**13 Forever Designer Diamond Bridal Collection**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,706,014  
**App. Date:** 05 déc/Dec 2014  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 7-64 JARDIN DRIVE  
 CONCORD ONTARIO  
 L4K 3P3  
**Wares:** (1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery(including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.  
**Indices:** FOREVER DESIGNER DIAMOND BRIDAL COLLECTION

**14 Forever Gold**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)  
**App. #:** 1,551,803  
**App. Date:** 14 nov/Nov 2011  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3  
**Wares:** (1) Electroform 9kt, 10kt, 14kt or 18kt gold jewellery filled/bonded/fused

**Indices:** with silver/titanium alloy mix.  
FOREVER GOLD

**15 Forever Loved Diamond Collection**

**Category:** Uncategorized  
**Status:** ALLOWED/ADMISE  
**App. #:** 1,666,827  
**App. Date:** 07 mars/Mar 2014  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4P 2L9

**Wares:** (1) White, yellow and rose gold, silver and platinum jewellery (including earrings, rings, pendants, bracelets, brooches) set with diamonds and/or coloured precious and/or semi-precious gems.

**Indices:** FOREVER LOVED DIAMOND COLLECTION

**16 Halo Diamond Collection**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,503,153  
**App. Date:** 09 nov/Nov 2010  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) Gold, platinum and/or silver jewellery (including earrings, rings, pendants, bracelets and brooches in Platinum, Silver or 9kt, 10kt, 14kt, 18kt gold set with diamonds and/or coloured precious and/or semi-precious gems).

**Indices:** HALO DIAMOND COLLECTION

**17 Ice Beats Diamond Collection**

**Category:** Uncategorized  
**Status:** ALLOWED/ADMISE  
**App. #:** 1,705,833  
**App. Date:** 04 déc/Dec 2014  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery (including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.

**Indices:** ICE BEATS DIAMOND COLLECTION

**18 LuLu Diamond & Gold Collection**

**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE  
**Reg. #:** TMA724,749  
**Reg. Date:** 29 sept/Sep 2008  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**Wares:** (1) White, Yellow & Rose gold jewellery (including earrings, pendants,

bracelets, rings and brooches) set with diamonds and/or coloured  
precious and/or semi-precious gems.  
**Indices:** LULU DIAMOND & GOLD COLLECTION

**19** **My Diamonds - Diamond & Gold Collection**  
**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE  
40(3)  
**App. #:** 1,369,344  
**App. Date:** 26 oct/Oct 2007  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of  
Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) White, yellow & rose gold jewellery (including earrings, rings,  
pendants, bracelets and brooches) set with diamonds and/or coloured  
precious and/or semi-precious gems.  
**Indices:** MY DIAMONDS - DIAMOND & GOLD COLLECTION

**20** **Nature's best diamonds**  
**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,613,171  
**App. Date:** 07 fév/Feb 2013  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of  
Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) Canadian diamonds  
**Indices:** NATURE'S BEST DIAMONDS

**21** **Passionate Heart**  
**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE  
**Reg. #:** TMA785,155  
**Reg. Date:** 16 déc/Dec 2010  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of  
Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) 74/78 faceted specialty cut diamonds.  
**Indices:** PASSIONATE HEART

**22** **Royal Princess Diamond Collections**  
**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,651,861  
**App. Date:** 13 nov/Nov 2013  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of  
Owner(s):** 64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) Invisible set princess cut diamonds set together in center stone  
position on a ring or pendant of 9kt, 10kt, 14kt or 18kt yellow, white or  
rose gold with diamond accents.  
**Indices:** ROYAL PRINCESS DIAMOND COLLECTIONS

**23**                    **Sempre Oro**  
**Category:**            Uncategorized  
**Status:**              ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE  
                              40(3)  
**App. #:**                1,551,802  
**App. Date:**          14 nov/Nov 2011  
**Owner(s):**             J.S.N. JEWELLERY INC.  
**Address(es) of**      64 JARDIN DRIVE, UNIT 7  
**Owner(s):**             CONCORD ONTARIO  
                              L4K 3P3  
**Wares:**                (1) Electroform 9kt, 10kt, 14kt or 18kt gold jewellery filled/bonded/fused  
                              with silver/titanium alloy mix.  
**Indices:**              SEMPRE ORO  
                              FOREVER GOLD

**24**                    **Shining Star Diamond**  
**Category:**            Uncategorized  
**Status:**              ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:**                1,522,107  
**App. Date:**          04 avr/Apr 2011  
**Owner(s):**             J.S.N. JEWELLERY INC.  
**Address(es) of**      64 JARDIN DRIVE, UNIT 7  
**Owner(s):**             CONCORD ONTARIO  
                              L4K 3P3  
**Wares:**                (1) Exclusive 68 faceted diamonds using Canadian or non-Canadian  
                              diamonds. To be used or sold in precious metal jewellery of 10kt, 14kt  
                              or 18kt yellow and/or white gold or platinum.  
**Indices:**              SHINING STAR DIAMOND

**25**                    **Soul Mates Diamond Collection**  
**Category:**            Uncategorized  
**Status:**              ALLOWED/ADMISE  
**App. #:**                1,655,752  
**App. Date:**          11 déc/Dec 2013  
**Owner(s):**             J.S.N. JEWELLERY INC.  
**Address(es) of**      64 JARDIN DRIVE, UNIT 7  
**Owner(s):**             CONCORD ONTARIO  
                              L4K 3P3  
**Wares:**                (1) Diamond wedding bands, engagement rings, men's and ladies'  
                              fashion rings, pendants, earrings and bracelets crafted in silver and/or  
                              yellow, white or rose gold and/or platinum  
**Indices:**              SOUL MATES DIAMOND COLLECTION  
                              SOULMATES

**26**                    **Starlight Diamond**  
**Category:**            Uncategorized  
**Status:**              ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:**                1,522,106  
**App. Date:**          04 avr/Apr 2011  
**Owner(s):**             J.S.N. JEWELLERY INC.  
**Address(es) of**      64 JARDIN DRIVE, UNIT 7  
**Owner(s):**             CONCORD ONTARIO  
                              L4K 3P3  
**Wares:**                (1) Exclusive 68 faceted diamonds using Canadian and/or  
                              non-Canadian diamonds. To be sold in precious metal jewellery of  
                              10kt, 14kt or 18kt yellow and/or white gold or platinum.

**Indices:** STARLIGHT DIAMOND  
STAR LIGHT

**27 the coolest diamonds on earth**

**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE  
**Reg. #:** TMA785,152  
**Reg. Date:** 16 déc/Dec 2010  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) Canadian diamonds.  
**Indices:** THE COOLEST DIAMONDS ON EARTH

**28 The Diamond Blossom collections**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,613,176  
**App. Date:** 07 fév/Feb 2013  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) A beautiful array of diamonds set perfectly together to create an immense brilliant sparkle set in precious metal jewellery including but not limited to rings, earrings, bangles, bracelets and pendants.  
**Indices:** THE DIAMOND BLOSSOM COLLECTIONS

**29 The Elite Diamond Collection**

**Category:** Uncategorized  
**Status:** REGISTERED/ENREGISTRÉE  
**Reg. #:** TMA722,723  
**Reg. Date:** 28 août/Aug 2008  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) Premium diamond jewellery line set in white and/or yellow gold(including earrings, rings, pendants, bracelets and brooches).  
**Indices:** THE ELITE DIAMOND COLLECTION

**30 The Love 100 Diamond**

**Category:** Uncategorized  
**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,621,679  
**App. Date:** 09 avr/Apr 2013  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Wares:** (1) A diamond cut with 100 to 104 facets  
**Indices:** THE LOVE 100 DIAMOND

**31 Treasure Chest Event**

**Category:** Uncategorized

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**Status:** ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36  
**App. #:** 1,613,175  
**App. Date:** 07 fév/Feb 2013  
**Owner(s):** J.S.N. JEWELLERY INC.  
**Address(es) of Owner(s):** 64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3  
**Services:** (1) To buy jewellery, precious metals and stones including but not limited to gold, silver, platinum and diamonds from the public in return for monetary or retail credit as consideration.  
  
(2) A retail sale of consumer jewellery offering the public the ability to pay for all of a portion of their purchase with private owned jewellery, precious metals and stones including but not limited to gold, silver, platinum and diamonds.  
**Indices:** TREASURE CHEST EVENT

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**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

12 fév/Feb 2010

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

16 déc/Dec 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

▶ ...nothing shines brighter

**WARES/MARCHANDISES:**

(1) 74/78 faceted specialty cut diamonds.

Declaration of Use filed December 16, 2010.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical  
correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité Inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

...NOTHING SHINES BRIGHTER

Action	Date	Response Date	Additional Information
Filed/Produite	2010/02/12		
Created/Créé	2010/02/12		



APPL'N/DEM. NO 1,469,404

Item 1 of 31  
REGISTRATION/ENREGISTREMENT NO TMA785,156

Formalized/Formalisée	2010/02/16		
Search Recorded/Recherche enregistrée	2010/05/17		
Approval Notice Sent/Avls d'approbation envoyé	2010/05/19	2010/06/16	
Approved/Approuvée	2010/07/08		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2010/07/09		Vol.57 Issue 2907 2010/07/14
Advertised/Publiée	2010/07/14		Vol.57 Issue 2907
Allowed/Admise	2010/10/29		
Allowance Notice Sent/Avls d'admission envoyé	2010/10/29	2013/02/12	
Registered/Enregistrée	2010/12/16		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

032

APPL'N/DEM. NO 1,369,345

Item 2 of 31  
REGISTRATION/ENREGISTREMENT NO TMA722,722

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

26 oct/Oct 2007

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

28 août/Aug 2008

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Always & Forever Family Collection

**WARES/MARCHANDISES:**

(1) White and/or yellow jewellery(Including earrings, rings, bracelets, pendants and brooches) set with diamonds and/or precious and/or semi- precious gems.

Used in CANADA since January 01, 2004.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on 2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC, Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

ALWAYS & FOREVER FAMILY COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produit	2007/10/26		

APPL'N/DEM. NO 1,369,345

REGISTRATION/ENREGISTREMENT NO TMA722,722

Created/Créé	2007/10/29	
Formalized/Formalisée	2007/10/29	
Search Recorded/Recherche enregistrée	2008/05/15	
Approved/Approuvée	2008/05/22	
Extracted for Advertisement/Extrait pour Publication	2008/05/22	Vol.55 Issue 2797 2008/06/04
Advertised/Publée	2008/06/04	Vol.55 Issue 2797
Allowed/Admise	2008/08/22	
Allowance Notice Sent/Avis d'admission envoyé	2008/08/22	2009/02/22
Registered/Enregistrée	2008/08/28	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26	Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,714,793

**CATEGORY/CATÉGORIE:**Uncategorized  
These trademarks have not been categorized.**STATUS/STATUT:**

DEFAULT - SEARCHED/EN DÉFAUT - A FAIT L'OBJET D'UNE RECHERCHE

**FILING DATE/DATE DE PRODUCTION:**

11 fév/Feb 2015

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3**REP FOR SERVICE/REP POUR SIGNIFICATION:**J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD  
ONTARIO L4K 3P3  
REFERENCE: Blush**TRADE-MARK/MARQUE DE COMMERCE:**

► Blush Coloured Diamond Collection

**WARES/MARCHANDISES:**

(1) White, yellow and rose gold, silver and platinum jewellery (including earrings, rings, pendants, bangles, bracelets, brooches) set with coloured and/or white diamonds and/or coloured precious and/or semi- precious gems.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

BLUSH COLOURED DIAMOND COLLECTION

COLORED

Action	Date	Response Date	Additional Information
Filed/Produite	2015/02/11		
Created/Créé	2015/02/11		
Formalized/Formalisée	2015/02/12		
Search Recorded/Recherche enregistrée	2015/10/06		
Examiner's First Report/Premier rapport de l'examineur	2015/10/08	2016/04/08	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2016/04/14		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1655752
Default Notice Sent/Avis de défaut envoyé	2016/04/26	2016/06/26	

APPL'N/DEM. NO 1,469,402

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

12 fév/Feb 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

▶ Bright Star

**WARES/MARCHANDISES:**

(1) 74/78 faceted specialty cut diamonds.

Proposed Use in CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

BRIGHT STAR

Action	Date	Response Date	Additional Information
Filed/Produite	2010/02/12		
Created/Créé	2010/02/12		
Formalized/Formalisée	2010/02/16		
Search Recorded/Recherche enregistrée	2010/05/17		
Examiner's First Report/Premier rapport de l'examineur	2010/05/19	2010/11/19	
Default Notice Sent/Avls de défaut envoyé	2010/12/07	2011/02/07	Defaulting Action Date: 2010/05/19
Abandoned - Section 36/Abandonnée - article 36	2011/03/01		

APPL'N/DEM. NO 1,583,861

**CATEGORY/CATÉGORIE:**Uncategorized  
These trademarks have not been categorized.**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

27 juin/Jun 2012

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Canada Star

**WARES/MARCHANDISES:**

(1) White, yellow &amp; rose jewellery (including earrings, rings, pendants, bracelets and brooches) set with Canadian diamonds and/or coloured precious and/or semi-precious gems

Used in CANADA since March 01, 2012.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

CANADA STAR

Action	Date	Response Date	Additional Information
Filed/Produite	2012/06/27		
Created/Créé	2012/06/28		
Formalized/Formalisée	2012/07/11		
Search Recorded/Recherche enregistrée	2012/12/27		
Examiner's First Report/Premier rapport de l'examinateur	2012/12/31	2013/06/30	
Default Notice Sent/Avis de défaut envoyé	2013/07/24	2013/09/24	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,583,861

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Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Remove Default/Défaut enlevé	2013/12/27		
Correspondence Created/Correspondance créée	2013/12/27	2014/06/27	
Default Notice Sent/Avis de défaut envoyé	2014/07/15	2014/09/15	
Abandoned - Section 36/Abandonnée - article 36	2014/10/07		

APPL'N/DEM. NO 1,539,358

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

11 août/Aug 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

▶ Canadian Floating Diamond

**WARES/MARCHANDISES:**

(1) Specialty setting made of white gold, yellow gold, silver or platinum to create the illusion that the gemstone which maybe a diamond, precious or semi-precious stone placed in a bezel or claw setting is floating.

Used in CANADA since February 01, 2009.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14 19

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

CANADIAN FLOATING DIAMOND

Action	Date	Response Date	Additional Information
Filed/Produite	2011/08/11		
Created/Créé	2011/08/12		
Formalized/Formalisée	2011/08/22		
Search Recorded/Recherche enregistrée	2012/02/09		
Examiner's First Report/Premier rapport de l'examineur	2012/02/09	2012/08/09	
Default Notice Sent/Avls de défaut envoyé	2012/08/28	2012/10/28	
Abandoned - Section 36/Abandonnée - article 36	2012/11/20		



APPL'N/DEM. NO 1,427,477

Item 7 of 31  
REGISTRATION/ENREGISTREMENT NO TMA785,154

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

11 fév/Feb 2009

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

16 déc/Dec 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

➤ Canadian Ice Diamonds

**WARES/MARCHANDISES:**

(1) White, yellow & rose Jewellery (including earrings, rings, pendants, bracelets and brooches) set with Canadian diamonds and/or coloured precious and/or semi-precious gems.

Declaration of Use filed December 16, 2010.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on 2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC, Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

CANADIAN ICE DIAMONDS

Action	Date	Response Date	Additional Information
Filed/Produite	2009/02/11		


APPL'N/DEM. NO 1,427,477

REGISTRATION/ENREGISTREMENT NO TMA785,154

Created/Créé	2009/02/11		
Formalized/Formalisée	2009/02/13		
Search Recorded/Recherche enregistrée	2009/09/24		
Approval Notice Sent/Avis d'approbation envoyé	2009/09/24	2009/10/22	
Approved/Approuvée	2009/11/12		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2009/11/13		Vol.56 Issue 2873 2009/11/18
Advertised/Publiée	2009/11/18		Vol.56 Issue 2873
Allowed/Admise	2010/03/05		
Allowance Notice Sent/Avis d'admission envoyé	2010/03/05	2012/02/11	
Registered/Enregistrée	2010/12/16		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,714,794

**CATEGORY/CATÉGORIE:**

Uncategorized   
*These trademarks have not been categorized.*

**STATUS/STATUT:**

ALLOWED/ADMISE

**FILING DATE/DATE DE PRODUCTION:**

11 fév/Feb 2015

**CURRENT OWNER/PROPRIETAIRE COURANT:**

J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3

**REP FOR SERVICE/REP POUR SIGNIFICATION:**

J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD  
ONTARIO L4K 3P3  
REFERENCE: Colour Couture

**TRADE-MARK/MARQUE DE COMMERCE:**

➤ Colour Couture Diamond Collection

**WARES/MARCHANDISES:**

(1) White, yellow and rose gold, silver and platinum Jewellery (including earrings, rings, pendants, bangles, bracelets, brooches) set with coloured and/or white diamonds and/or coloured precious and/or semi- precious gems.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

COLOUR COUTURE DIAMOND COLLECTION

COLOR

Action	Date	Response Date	Additional Information
Filed/Produite	2015/02/11		
Created/Créé	2015/02/11		
Formalized/Formalisée	2015/02/12		
Search Recorded/Recherche enregistrée	2015/10/01		
Approval Notice Sent/Avis d'approbation envoyé	2015/10/01	2015/10/29	
Approved/Approuvée	2015/11/19		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2015/12/04		Vol.62 Issue 3189 2015/12/09
Advertised/Publiée	2015/12/09		Vol.62 Issue 3189
Allowed/Admise	2016/03/29		

APPL'N/DEM. NO 1,714,794

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Allowance Notice Sent/Avis d'admission envoyé	2016/03/29	2018/02/11	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2016/04/14		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1655752

APPL'N/DEM. NO 1,621,752

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

09 avr/Apr 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

▶ Diamond Blossom Cut

**WARES/MARCHANDISES:**

(1) 104 facet diamond cut

Used in CANADA since January 01, 2013.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

DIAMOND BLOSSOM CUT

Action	Date	Response Date	Additional Information
Filed/Produite	2013/04/09		
Created/Créé	2013/04/10		
Formalized/Formalisée	2013/04/11		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Search Recorded/Recherche enregistrée	2013/12/11		

APPL'N/DEM. NO 1,621,752


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Examiner's First Report/Premier rapport de l'examineur	2013/12/19	2014/06/19
Default Notice Sent/Avis de défaut envoyé	2014/07/08	2014/09/08
Abandoned - Section 36/Abandonnée - article 36	2014/09/30	

APPL'N/DEM. NO 1,705,838

Item 10 of 31

**CATEGORY/CATÉGORIE:**

Uncategorized   
These trademarks have not been categorized.

**STATUS/STATUT:**

ALLOWED/ADMISE

**FILING DATE/DATE DE PRODUCTION:**

04 déc/Dec 2014

**CURRENT OWNER/PROPRIETAIRE COURANT:**

J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3

**REP FOR SERVICE/REP POUR SIGNIFICATION:**

J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD  
ONTARIO L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Diamond Vibes Diamond Collection

**WARES/MARCHANDISES:**

(1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery (including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

DIAMOND VIBES DIAMOND COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2014/12/04		
Created/Créé	2014/12/05		
Formalized/Formalisée	2014/12/08		
Search Recorded/Recherche enregistrée	2015/07/15		
Approval Notice Sent/Avis d'approbation envoyé	2015/07/15	2015/08/12	
Approved/Approuvée	2015/09/03		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2015/09/04		Vol.62 Issue 3176 2015/09/09
Advertised/Publiée	2015/09/09		Vol.62 Issue 3176
Allowed/Admise	2015/12/24		
Allowance Notice Sent/Avis d'admission envoyé	2015/12/24	2017/12/04	

APPL'N/DEM. NO 1,705,838

Record Security Interest / License  
Agreement/Enregistrement Garantie /  
Entente de license

2016/04/14

Security Agreement Placed on File / Voir  
Preuve au dossier/See evidence on File  
No. 1655752



APPL'N/DEM. NO 1,361,994

Item 11 of 31  
REGISTRATION/ENREGISTREMENT NO TMA718,766

CATEGORY/CATÉGORIE:

Uncategorized  
*These trademarks have not been categorized.*

STATUS/STATUT:

REGISTERED/ENREGISTRÉE

FILING DATE/DATE DE PRODUCTION:

27 août/Aug 2007

REGISTRATION DATE/DATE D'ENREGISTREMENT:

17 juil/Jul 2008

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**REP FOR SERVICE/REP POUR SIGNIFICATION:**DAVID A. STEIN  
5075 YONGE STREET  
SUITE 800  
TORONTO  
ONTARIO M2N 6C6  
416-225-5007  
REFERENCE: 17043**TRADE-MARK/MARQUE DE COMMERCE:**

► ELITE COLLECTION

**WARES/MARCHANDISES:**

(1) Rings, pendants, bracelets, earrings, necklaces, and cuff links.

Used in CANADA since May 01, 2007.

**ASSOCIATED MARKS/MARQUES LIEES:**

TMA722,723

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical  
correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14


**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

ELITE COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2007/08/27		
Created/Cr��	2007/08/31		
Formalized/Formalis��e	2007/09/24		
Agent Changed/Changement d'agent	2008/03/04		From: To: 7196
Search Recorded/Recherche enregistr��e	2008/03/04		
Approved/Approuv��e	2008/03/20		
Extracted for Advertisement/Extrait pour Publication	2008/04/03		Vol.55 Issue 2790 2008/04/16
Advertised/Publ��e	2008/04/16		Vol.55 Issue 2790
Allowed/Admise	2008/07/04		
Allowance Notice Sent/Avis d'admission envoy��	2008/07/04	2009/01/04	
Registered/Enregistr��e	2008/07/17		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,539,353

**CATEGORY/CATÉGORIE:**

Uncategorized   
*These trademarks have not been categorized.*

**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

11 août/Aug 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
 64 JARDIN DRIVE  
 UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Floating Diamond

**WARES/MARCHANDISES:**

(1) Specialty setting made of white gold, yellow gold, silver or platinum to create the illusion that the gemstone which maybe a diamond, precious or semi-precious stone placed in a bezel or claw setting is floating.

Used in CANADA since February 01, 2009.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14  
 CDNameSearch V7: 14  
 CDNameSearch V8: 14 19

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

FLOATING DIAMOND

Action	Date	Response Date	Additional Information
Filed/Produite	2011/08/11		
Created/Créé	2011/08/12		
Formalized/Formalisée	2011/08/22		
Search Recorded/Recherche enregistrée	2012/02/09		
Examiner's First Report/Premier rapport de l'examineur	2012/02/09	2012/08/09	
Default Notice Sent/Avis de défaut envoyé	2012/08/28	2012/10/28	
Abandoned - Section 36/Abandonnée - article 36	2012/11/20		

APPL'N/DEM. NO 1,706,014

**CATEGORY/CATÉGORIE:**Uncategorized  
These trademarks have not been categorized.**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

05 déc/Dec 2014

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
7-64 JARDIN DRIVE  
CONCORD ONTARIO  
L4K 3P3**REP FOR SERVICE/REP POUR SIGNIFICATION:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD  
ONTARIO L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Forever Designer Diamond Bridal Collection

**WARES/MARCHANDISES:**

(1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery (including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNÉE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

FOREVER DESIGNER DIAMOND BRIDAL COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2014/12/05		
Created/Créé	2014/12/08		
Formalized/Formalisée	2014/12/10		
Search Recorded/Recherche enregistrée	2015/07/20		
Examiner's First Report/Premier rapport de l'examinateur	2015/07/20	2016/01/20	
Default Notice Sent/Avis de défaut envoyé	2016/02/09	2016/04/09	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2016/04/14		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1655752
Abandoned - Section 36/Abandonnée - article 36	2016/05/03		

APPL'N/DEM. NO 1,551,803

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)

**FILING DATE/DATE DE PRODUCTION:**

14 nov/Nov 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Forever Gold

**WARES/MARCHANDISES:**

(1) Electroform 9kt, 10kt, 14kt or 18kt gold jewellery filled/bonded/fused with silver/titanium alloy mix.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 06 07 09 14

CDNameSearch V8: 06 07 09 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

FOREVER GOLD

Action	Date	Response Date	Additional Information
Filed/Produite	2011/11/14		
Created/Créé	2011/11/14		
Formalized/Formalisée	2011/11/16		
Search Recorded/Recherche enregistrée	2012/05/14		
Approval Notice Sent/Avis d'approbation envoyé	2012/05/14	2012/06/11	
Approved/Approuvée	2012/07/05		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2012/07/06		Vol.59 Issue 3011 2012/07/11
Advertised/Publée	2012/07/11		Vol.59 Issue 3011
Allowed/Admise	2012/10/26		

APPL'N/DEM. NO 1,551,803

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Allowance Notice Sent/Avis d'admission envoyé	2012/10/26	2014/11/14	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Abandoned - Section 40(3)/Abandonnée - paragraphe 40(3)	2014/12/03		

APPL'N/DEM. NO 1,666,827

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

ALLOWED/ADMISE

**FILING DATE/DATE DE PRODUCTION:**

07 mars/Mar 2014

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
 64 JARDIN DRIVE, UNIT 7  
 CONCORD ONTARIO  
 L4P 2L9

**TRADE-MARK/MARQUE DE COMMERCE:**

► Forever Loved Diamond Collection

**WARES/MARCHANDISES:**

(1) White, yellow and rose gold, silver and platinum jewellery (including earrings, rings, pendants, bracelets, brooches) set with diamonds and/or coloured precious and/or semi-precious gems.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité inscrit au dossier  
 DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016  
 DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016  
 COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")  
 Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14  
 CDNameSearch V7: 14  
 CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

FOREVER LOVED DIAMOND COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produit	2014/03/07		
Created/Créé	2014/03/07		
Formalized/Formalisée	2014/03/10		
Search Recorded/Recherche enregistrée	2014/10/17		
Approval Notice Sent/Avis d'approbation envoyé	2014/10/17	2014/11/14	
Approved/Approuvée	2014/12/04		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2014/12/05		Vol.61 Issue 3137 2014/12/10
Advertised/Publiée	2014/12/10		Vol.61 Issue 3137
Allowed/Admise	2015/03/27		
Allowance Notice Sent/Avis d'admission envoyé	2015/03/27	2017/03/07	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2016/04/14		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1655752

APPL'N/DEM. NO 1,503,153

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

09 nov/Nov 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

▶ Halo Diamond Collection

**WARES/MARCHANDISES:**

(1) Gold, platinum and/or silver jewellery (including earrings, rings, pendants, bracelets and brooches in Platinum, Silver or 9kt, 10kt, 14kt, 18kt gold set with diamonds and/or coloured precious and/or semi-precious gems).

Proposed Use in CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 06 14

CDNameSearch V8: 06 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

HALO DIAMOND COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2010/11/09		
Created/Créé	2010/11/10		
Formalized/Formalisée	2010/11/17		
Search Recorded/Recherche enregistrée	2011/03/17		
Examiner's First Report/Premier rapport de l'examineur	2011/03/22	2011/09/22	
Default Notice Sent/Avis de défaut envoyé	2011/10/11	2011/12/11	
Abandoned - Section 36/Abandonnée - article 36	2012/01/03		



APPL'N/DEM. NO 1,705,833

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*



**STATUS/STATUT:**

ALLOWED/ADMISE

**FILING DATE/DATE DE PRODUCTION:**

04 déc/Dec 2014

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
 7-64 JARDIN DRIVE  
 CONCORD ONTARIO  
 L4K 3P3

**REP FOR SERVICE/REP POUR SIGNIFICATION:**

J.S.N. JEWELLERY INC.  
 7-64 JARDIN DRIVE  
 CONCORD  
 ONTARIO L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Ice Beats Diamond Collection

**WARES/MARCHANDISES:**

(1) Platinum or 10kt, 14kt, 18kt yellow, white or rose gold jewellery (including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or semi-precious stones.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

ICE BEATS DIAMOND COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2014/12/04		
Created/Créé	2014/12/05		
Formalized/Formalisée	2014/12/08		
Search Recorded/Recherche enregistrée	2015/07/15		
Approval Notice Sent/Avis d'approbation envoyé	2015/07/15	2015/08/12	
Approved/Approuvée	2015/09/03		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2015/09/18		Vol.62 Issue 3178 2015/09/23
Advertised/Publiée	2015/09/23		Vol.62 Issue 3178
Allowed/Admise	2016/01/08		
Allowance Notice Sent/Avis d'admission envoyé	2016/01/08	2017/12/04	

APPL'N/DEM. NO 1,705,833

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Record Security Interest / License  
Agreement/Enregistrement Garantie /  
Entente de license


2016/04/14

Security Agreement Placed on File / Voir  
Preuve au dossier/See evidence on File  
No. 1655752

APPL'N/DEM. NO 1,368,881

Item 18 of 31  
REGISTRATION/ENREGISTREMENT NO TMA724,749

**CATEGORY/CATÉGORIE:**

Uncategorized   
*These trademarks have not been categorized.*

**STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

24 oct/Oct 2007

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

29 sept/Sep 2008

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► LuLu Diamond & Gold Collection

**WARES/MARCHANDISES:**

(1) White, Yellow & Rose gold jewellery (including earrings, pendants, bracelets, rings and brooches) set with diamonds and/or coloured precious and/or semi-precious gems.

Declaration of Use filed September 29, 2008.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013  
DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013  
COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC  
Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical  
correction/Correction  
DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013  
DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013  
COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.  
Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013  
DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013  
COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent  
Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14  
CDNameSearch V7: 14  
CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

LULU DIAMOND & GOLD COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2007/10/24		

APPL'N/DEM. NO 1,368,881

REGISTRATION/ENREGISTREMENT NO TMA724,749

Created/Créé	2007/10/24	
Formalized/Formalisée	2007/10/25	
Search Recorded/Recherche enregistrée	2008/05/29	
Approved/Approuvée	2008/06/09	
Extracted for Advertisement/Extrait pour Publication	2008/06/19	Vol.55 Issue 2801 2008/07/02
Advertised/Publée	2008/07/02	Vol.55 Issue 2801
Allowed/Admise	2008/09/19	
Allowance Notice Sent/Avis d'admission envoyé	2008/09/19	2010/10/24
Registered/Enregistrée	2008/09/29	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26	Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,369,344

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)

**FILING DATE/DATE DE PRODUCTION:**

26 oct/Oct 2007

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► My Diamonds - Diamond &amp; Gold Collection

**WARES/MARCHANDISES:**

(1) White, yellow &amp; rose gold jewellery (including earrings, rings, pendants, bracelets and brooches) set with diamonds and/or coloured precious and/or semi-precious gems.

Proposed Use In CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

MY DIAMONDS - DIAMOND &amp; GOLD COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2007/10/26		
Created/Créé	2007/10/29		
Formalized/Formalisée	2007/10/29		
Search Recorded/Recherche enregistrée	2008/05/29		
Approved/Approuvée	2008/06/05		
Extracted for Advertisement/Extrait pour Publication	2008/06/05		Vol.55 Issue 2799 2008/06/18
Advertised/Publée	2008/06/18		Vol.55 Issue 2799
Allowed/Admise	2008/09/05		
Allowance Notice Sent/Avs d'admission envoyé	2008/09/05	2010/10/26	
Abandoned - Section 40(3)/Abandonnée - paragraphe 40(3)	2010/11/17		

APPL'N/DEM. NO 1,613,171

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

07 fév/Feb 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Nature's best diamonds

**WARES/MARCHANDISES:**

(1) Canadian diamonds

Used in CANADA since January 01, 2013.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

NATURE'S BEST DIAMONDS

Action	Date	Response Date	Additional Information
Filed/Produite	2013/02/07		
Created/Créé	2013/02/08		
Formalized/Formalisée	2013/02/11		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Search Recorded/Recherche enregistrée	2013/09/26		

APPL'N/DEM. NO 1,613,171

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Approval Notice Sent/Avis d'approbation envoyé	2013/09/26	2013/10/24	
Approved/Approuvée	2013/11/14		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2013/11/15		Vol.60 Issue 3082 2013/11/20
Advertised/Publiée	2013/11/20		Vol.60 Issue 3082
Allowed/Admise	2014/03/07		
Allowance Notice Sent/Avis d'admission envoyé	2014/03/07	2014/09/07	
Default Notice Sent/Avis de défaut envoyé	2014/10/01	2014/12/01	
Abandoned - Section 36/Abandonnée - article 36	2014/12/24		

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

12 fév/Feb 2010

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

16 déc/Dec 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Passionate Heart

**WARES/MARCHANDISES:**

(1) 74/78 faceted specialty cut diamonds.

Declaration of Use filed December 16, 2010.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié

Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**

TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical

correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité Inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

PASSIONATE HEART

Action	Date	Response Date	Additional Information
Filed/Produite	2010/02/12		
Created/Créé	2010/02/12		



APPL'N/DEM. NO 1,469,403

Item 21 of 31  
REGISTRATION/ENREGISTREMENT NO TMA785,155

Formalized/Formalisée	2010/02/16		
Search Recorded/Recherche enregistrée	2010/05/17		
Approval Notice Sent/Avis d'approbation envoyé	2010/05/19	2010/06/16	
Approved/Approuvée	2010/07/08		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2010/07/09		Vol.57 Issue 2907 2010/07/14
Advertised/Publée	2010/07/14		Vol.57 Issue 2907
Allowed/Admise	2010/10/29		
Allowance Notice Sent/Avis d'admission envoyé	2010/10/29	2013/02/12	
Registered/Enregistrée	2010/12/16		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,651,861

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

13 nov/Nov 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE  
UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Royal Princess Diamond Collections

**WARES/MARCHANDISES:**

(1) Invisible set princess cut diamonds set together in center stone position on a ring or pendant of 9kt, 10kt, 14kt or 18kt yellow, white or rose gold with diamond accents.

Proposed Use In CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14 19


**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

ROYAL PRINCESS DIAMOND COLLECTIONS

Action	Date	Response Date	Additional Information
Filed/Produite	2013/11/13		
Created/Créé	2013/11/14		
Formalized/Formalisée	2013/11/14		
Search Recorded/Recherche enregistrée	2014/07/18		
Examiner's First Report/Premier rapport de l'examineur	2014/08/13	2015/02/13	
Default Notice Sent/Avis de défaut envoyé	2015/03/03	2015/05/03	
Abandoned - Section 36/Abandonnée - article 36	2015/05/26		

APPL'N/DEM. NO 1,551,802

**CATEGORY/CATÉGORIE:**

Uncategorized   
*These trademarks have not been categorized.*

**STATUS/STATUT:**

ABANDONED - SECTION 40(3)/ABANDONNÉE - PARAGRAPHE 40(3)

**FILING DATE/DATE DE PRODUCTION:**

14 nov/Nov 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Sempre Oro

The translation of Sempre Oro as provided by applicant is forever gold.

**WARES/MARCHANDISES:**

(1) Electroform 9kt, 10kt, 14kt or 18kt gold jewellery filled/bonded/fused with silver/titanium alloy mix.

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Amended Security Agreement Placed on file/Accord de sécurité modifié inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 06 07 09 14

CDNameSearch V8: 06 07 09 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

SEMPRE ORO

FOREVER GOLD


Action	Date	Response Date	Additional Information
Filed/Produite	2011/11/14		
Created/Créé	2011/11/14		
Formalized/Formalisée	2011/11/16		
Search Recorded/Recherche enregistrée	2012/05/14		
Examiner's First Report/Premier rapport de l'examineur	2012/05/14	2012/11/14	
Approval Notice Sent/Avls d'approbation envoyé	2012/08/31	2012/09/28	
Approved/Approuvée	2012/10/18		APPROVED BY PROGRAM EX200M1

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Extracted for Advertisement/Extrait pour Publication	2012/11/02	Vol.59 Issue 3028 2012/11/07
Advertised/Publée	2012/11/07	Vol.59 Issue 3028
Allowed/Admise	2013/02/22	
Allowance Notice Sent/Avls d'admission envoyé	2013/02/22    2014/11/14	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26	Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26	Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Abandoned - Section 40(3)/Abandonnée - paragraphe 40(3)	2014/12/03	

APPL'N/DEM. NO 1,522,107

**CATEGORY/CATÉGORIE:**

Uncategorized   
*These trademarks have not been categorized.*

**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

04 avr/Apr 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

► Shining Star Diamond

**WARES/MARCHANDISES:**

(1) Exclusive 68 faceted diamonds using Canadian or non-Canadian diamonds. To be used or sold in precious metal jewellery of 10kt, 14kt or 18kt yellow and/or white gold or platinum.

Proposed Use in CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14  
CDNameSearch V7: 14  
CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

SHINING STAR DIAMOND

Action	Date	Response Date	Additional Information
Filed/Produite	2011/04/04		
Created/Créé	2011/04/04		
Formalized/Formalisée	2011/04/11		
Search Recorded/Recherche enregistrée	2011/09/29		
Examiner's First Report/Premier rapport de l'examinateur	2011/09/29	2012/03/29	
Default Notice Sent/Avis de défaut envoyé	2012/04/17	2012/06/17	
Abandoned - Section 36/Abandonnée - article 36	2012/07/10		

APPL'N/DEM. NO 1,655,752

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ALLOWED/ADMISE

**FILING DATE/DATE DE PRODUCTION:**

11 déc/Dec 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Soul Mates Diamond Collection

**WARES/MARCHANDISES:**

(1) Diamond wedding bands, engagement rings, men's and ladies' fashion rings, pendants, earrings and bracelets crafted in silver and/or yellow, white or rose gold and/or platinum

Proposed Use in CANADA.

**FOOTNOTES/NOTES:**

Security Agreement Placed on File/Accord de sécurité inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 14 avr/Apr 2016

DATE OF CHANGE/DATE DE CHANGEMENT: 14 avr/Apr 2016

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC (the "Agent")

Voir Preuve au dossier/See evidence on File No. 1655752

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

SOUL MATES DIAMOND COLLECTION

SOULMATES

Action	Date	Response Date	Additional Information
Filed/Produite	2013/12/11		
Created/Créé	2013/12/11		
Formalized/Formalisée	2013/12/13		
Search Recorded/Recherche enregistrée	2014/08/06		
Approval Notice Sent/Avis d'approbation envoyé	2014/08/06	2014/09/03	
Approved/Approuvée	2014/09/25		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2014/09/26		Vol.61 Issue 3127 2014/10/01
Advertised/Publiée	2014/10/01		Vol.61 Issue 3127
Allowed/Admise	2015/01/16		
Allowance Notice Sent/Avis d'admission envoyé	2015/01/16	2016/12/11	
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2016/04/14		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1655752

APPL'N/DEM. NO 1,522,106

**CATEGORY/CATÉGORIE:**

Uncategorized  
*These trademarks have not been categorized.*

**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

04 avr/Apr 2011

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**

J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3

**TRADE-MARK/MARQUE DE COMMERCE:**

➤ Starlight Diamond

**WARES/MARCHANDISES:**

(1) Exclusive 68 faceted diamonds using Canadian and/or non-Canadian diamonds. To be sold in precious metal jewellery of 10kt, 14kt or 18kt yellow and/or white gold or platinum.

Proposed Use in CANADA.

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14  
CDNameSearch V7: 14  
CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

STARLIGHT DIAMOND  
STAR LIGHT

Action	Date	Response Date	Additional Information
Filed/Produite	2011/04/04		
Created/Créé	2011/04/04		
Formalized/Formalisée	2011/04/11		
Search Recorded/Recherche enregistrée	2011/09/29		
Examiner's First Report/Premier rapport de l'examineur	2011/09/29	2012/03/29	
Default Notice Sent/Avi de défaut envoyé	2012/04/17	2012/06/17	
Abandoned - Section 36/Abandonnée - article 36	2012/07/10		

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

23 jui/Jul 2009

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

16 déc/Dec 2010

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

➤ the coolest diamonds on earth

**WARES/MARCHANDISES:**

(1) Canadian diamonds.

Used in CANADA since February 11, 2009.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical  
correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

THE COOLEST DIAMONDS ON EARTH

Action	Date	Response Date	Additional Information
Filed/Produite	2009/07/23		
Created/Créé	2009/07/24		



APPL'N/DEM. NO 1,445,849

REGISTRATION/ENREGISTREMENT NO TMA785,152

Formalized/Formalisée	2009/07/28		
Search Recorded/Recherche enregistrée	2009/12/03		
Approval Notice Sent/Avls d'approbation envoyé	2009/12/03	2009/12/31	
Approved/Approuvée	2010/01/21		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2010/01/22		Vol.57 Issue 2883 2010/01/27
Advertised/Publée	2010/01/27		Vol.57 Issue 2883
Allowed/Admise	2010/05/14		
Allowance Notice Sent/Avls d'admission envoyé	2010/05/14	2010/11/14	
Default Notice Sent/Avls de défaut envoyé	2010/12/08	2011/02/08	
Registered/Enregistrée	2010/12/16		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,613,176

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

07 fév/Feb 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► The Diamond Blossom collections

**WARES/MARCHANDISES:**

(1) A beautiful array of diamonds set perfectly together to create an immense brilliant sparkle set in precious metal jewellery including but not limited to rings, earrings, bangles, bracelets and pendants.

Used in CANADA since January 01, 2013.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

THE DIAMOND BLOSSOM COLLECTIONS

Action	Date	Response Date	Additional Information
Filed/Produite	2013/02/07		
Created/Créé	2013/02/08		
Formalized/Formalisée	2013/02/11		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,613,176

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Search Recorded/Recherche enregistrée	2013/10/01	
Examiner's First Report/Premier rapport de l'examineur	2013/10/01	2014/04/01
Default Notice Sent/Avis de défaut envoyé	2014/04/22	2014/06/22
Abandoned - Section 36/Abandonnée - article 36	2014/07/15	

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

REGISTERED/ENREGISTRÉE

**FILING DATE/DATE DE PRODUCTION:**

24 oct/Oct 2007

**REGISTRATION DATE/DATE D'ENREGISTREMENT:**

28 août/Aug 2008

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

▶ The Elite Diamond Collection

**WARES/MARCHANDISES:**

(1) Premium diamond jewellery line set in white and/or yellow gold (including earrings, rings, pendants, bracelets and brooches).

Used in CANADA since October 15, 2006.

**ASSOCIATED MARKS/MARQUES LIEES:**

TMA718,766

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

**CHANGE IN TITLE/CHANGEMENT EN TITRE:**TYPE OF CHANGE/GENRE DE CHANGEMENT: Clerical  
correction/Correction

DATE REGISTERED/DATE DE L'ENREGISTREMENT: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: To remove the entry recorded on  
2013/08/26.

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,  
Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

THE ELITE DIAMOND COLLECTION

Action	Date	Response Date	Additional Information
Filed/Produite	2007/10/24		
Created/Cr��	2007/10/24		
Formalized/Formallis��	2007/10/25		
Search Recorded/Recherche enregistr��e	2008/03/25		
Approved/Approuv��e	2008/03/27		
Extracted for Advertisement/Extrait pour Publication	2008/03/27		Vol.55 Issue 2789 2008/04/09
Advertised/Publi��e	2008/04/09		Vol.55 Issue 2789
Allowed/Admise	2008/06/27		
Allowance Notice Sent/Avis d'admission envoy��	2008/06/27	2008/12/27	
Registered/Enregistr��e	2008/08/28		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994

APPL'N/DEM. NO 1,621,679

**CATEGORY/CATÉGORIE:**Uncategorized  
*These trademarks have not been categorized.***STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

09 avr/Apr 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► The Love 100 Diamond

**WARES/MARCHANDISES:**

(1) A diamond cut with 100 to 104 facets

Used in CANADA since January 01, 2013.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité inscrit au  
dossier

DATE RECORDED/DATE CONSIGNÉE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 14

CDNameSearch V7: 14

CDNameSearch V8: 14

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

THE LOVE 100 DIAMOND

Action	Date	Response Date	Additional Information
Filed/Produite	2013/04/09		
Created/Créé	2013/04/09		
Formalized/Formalisée	2013/04/11		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Search Recorded/Recherche enregistrée	2013/12/05		

APPL'N/DEM. NO 1,621,679

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Examiner's First Report/Premier rapport de l'examineur	2013/12/05	2014/06/05
Default Notice Sent/Avis de défaut envoyé	2014/06/25	2014/08/25
Abandoned - Section 36/Abandonnée - article 36	2014/09/16	

APPL'N/DEM. NO 1,613,175

**CATEGORY/CATÉGORIE:**Uncategorized  
These trademarks have not been categorized.**STATUS/STATUT:**

ABANDONED - SECTION 36/ABANDONNÉE - ARTICLE 36

**FILING DATE/DATE DE PRODUCTION:**

07 fév/Feb 2013

**CURRENT OWNER/PROPRIÉTAIRE COURANT:**J.S.N. JEWELLERY INC.  
64 JARDIN DRIVE, UNIT 7  
CONCORD ONTARIO  
L4K 3P3**TRADE-MARK/MARQUE DE COMMERCE:**

► Treasure Chest Event

**SERVICES:**

(1) To buy jewellery, precious metals and stones including but not limited to gold, silver, platinum and diamonds from the public in return for monetary or retail credit as consideration.

(2) A retail sale of consumer jewellery offering the public the ability to pay for all of a portion of their purchase with private owned jewellery, precious metals and stones including but not limited to gold, silver, platinum and diamonds.

Used in CANADA since January 01, 2013.

**FOOTNOTES/NOTES:**Amended Security Agreement Placed on file/Accord de sécurité modifié  
Inscrit au dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC

Voir Preuve au dossier/See evidence on File No. 1361994

Security Agreement Placed on File/Accord de sécurité Inscrit au  
dossier

DATE RECORDED/DATE CONSIGNEE: 26 août/Aug 2013

DATE OF CHANGE/DATE DE CHANGEMENT: 26 août/Aug 2013

COMMENTS/COMMENTAIRES: Salus Capital Partners, LLC,

Administrative Agent

Voir Preuve au dossier/See evidence on File No. 1361994

**WARES & SERVICES CLASS CODES/CODES DE CLASSIFICATION DES MARCHANDISES & SERVICES:**

Industry Canada: 35

CDNameSearch V7: 35 36 42

CDNameSearch V8: 35 36

**INDEX HEADINGS/RUBRIQUES DE L'INDEX:**

TREASURE CHEST EVENT

Action	Date	Response Date	Additional Information
Filed/Produite	2013/02/07		
Created/Créé	2013/02/08		
Formalized/Formalisée	2013/02/11		
Record Security Interest / License Agreement/Enregistrement Garantie / Entente de licence	2013/08/26		Amended Security Agreement Placed on file / Voir Preuve au dossier/See evidence on File No. 1361994
Clerical Correction/Correction	2013/08/26		Clerical correction / Voir Preuve au dossier/See evidence on File No. 1361994


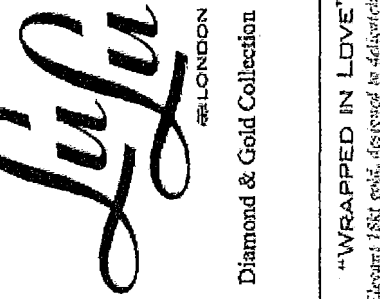
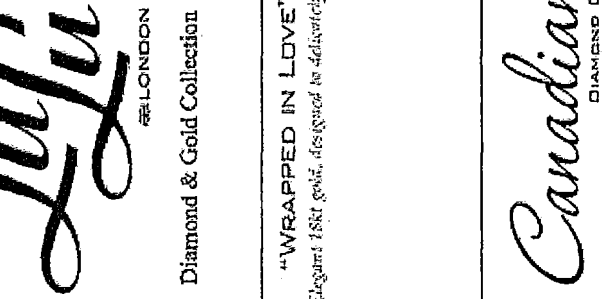


APPL'N/DEM. NO 1,613,175

Record Security Interest / License Agreement/Enregistrement Garantie / Entente de license	2013/08/26		Security Agreement Placed on File / Voir Preuve au dossier/See evidence on File No. 1361994
Search Recorded/Recherche enregistrée	2013/11/12		
Approval Notice Sent/Avis d'approbation envoyé	2013/11/12	2013/12/10	
Approved/Approuvée	2014/01/02		APPROVED BY PROGRAM EX200M1
Extracted for Advertisement/Extrait pour Publication	2014/01/17		Vol.61 Issue 3091 2014/01/22
Advertised/Publée	2014/01/22		Vol.61 Issue 3091
Allowed/Admise	2014/05/09		
Allowance Notice Sent/Avis d'admission envoyé	2014/05/09	2014/11/09	
Default Notice Sent/Avis de défaut envoyé	2014/12/03	2015/02/03	
Abandoned - Section 36/Abandonnée - article 36	2015/02/25		



This report was generated using CDNameSearch v5.0.0.0  
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Trade Mark No. / Mark Text	The Date	Status	Nice Classes	Image
UK00002491777	LONDON Diamond & Gold Collection	Registered	14	
UK00002518684	"WRAPPED IN LOVE" COLLECTION Elegant 18kt gold, designed to delicately embrace your diamonds	Registered	14	
UK00002522792	Canadian DIAMOND COLLECTION	Registered	14 42	
UK00003000737	Blossom Cut	Registered	14	
UK00003024816	Canadian Ice Pure Brilliance	Registered	14	
UK00003027645	Canadian Ice Diamonds	Registered	14	

Schedule "Section 4.3" - Consignment Inventory Schedule

JSN Group

Memo Summary

July-09-16

JSN UK

Cust #	Name	MEMOS at Sale Amount		GM Rate		28% GM		Estimated Cost Amount in USD	
		Memos FG	Memo Diamonds	Memos FG	Memo Diamonds	Memos FG	Memo Diamonds	Memos FG	Memo Diamonds
GGR1	Goldsmiths Group	66,853	-	52,228.80	-	68,419.73	-	68,419.73	-
ESA1	Essardes	-	-	-	-	-	-	-	-
FHA1	Fraser Hart	-	-	-	-	-	-	-	-
FHI1	F. Hinds	-	-	-	-	-	-	-	-
FI10	Fields of Dublin	-	-	-	-	-	-	-	-
HOU1+	Houdon Jewellers Group	-	-	-	-	-	-	-	-
MMG1	Mortimer Management Group	9,714	-	7,589.06	-	9,941.67	-	9,941.67	-
REG1	Regency	60,608	-	47,350.00	-	62,028.50	-	62,028.50	-
	Other Customers	47,182	42,637	36,860.94	33,310.07	48,287.83	43,636.19	48,287.83	43,636.19
	Total Customers GBP	184,357	42,637	144,028.80	33,310.07	188,677.73	43,636.19	188,677.73	43,636.19
			UK £						
BSPI	DIP Diffusione USD	-	-	-	-	-	-	-	-
			UK £						

JSN US (GM)

Cust #	Name	MEMOS at Sale Amount		Estimated Cost Local Currency @ 28% GM		Estimated Cost Amount in USD	
		Memos FG	Memo Diamonds	Memos FG	Memo Diamonds	Memos FG	Memo Diamonds
FRES	Fred Meyers	3,929,618	-	3,070,013.67	-	3,070,013.67	-
GSI	GSI Commerce	-	-	-	-	-	-
RH11	Rogers Enterprise	384,831	-	300,649.22	-	300,649.22	-
ZAL1	Zales Corporation	134,245	-	104,878.65	-	104,878.65	-
	Other Customers	-	-	-	-	-	-
	Total Customers USD	4,448,693.17	-	3,475,541.54	-	3,475,541.54	-
			USD				

JSN CA

Cust #	Name	MEMOS at Sale Amount		Estimated Cost Local Currency @ 28% GM		Estimated Cost Amount in USD	
		Memos FG	Memo Diamonds	Memos FG	Memo Diamonds	Memos FG	Memo Diamonds
FOR7	Forever Jewellery Inc.	-	-	-	-	-	-
ANN2	Ann-Louise Jewellers Ltd.	33,364	-	26,065.63	-	20,070.53	-
CDC1	Charm Diamond Centres	35,802	-	27,970.31	-	21,537.14	-
DOU1	Les Bijoutiers Doucet 1993 Inc	22,244	-	17,378.13	-	13,381.16	-
IND3	Independent Jewellers	-	-	-	-	-	-
LAV2	Bijouterie Lavigueur Ltee	241,699	6,569	188,827.31	5,132.03	145,397.03	3,951.66
	Other Customers	-	-	-	-	-	-
	Total Customers CDN	333,109	6,569	260,241.38	5,132.03	200,385.86	3,951.66
	Always & Forever	-	-	-	-	-	-
	Total 3rd Party Customers	333,109	6,569	260,241.38	5,132.03	200,385.86	3,951.66
			CDN \$				
			CDN \$				

JSN GROUP in CDN\$

Cust #	Name	MEMOS at Sale Amount		Estimated Cost CDN \$ @ 28% GM		Estimated Cost Amount in USD	
		Memos FG	Memo Diamonds	Memos FG	Memo Diamonds	Memos FG	Memo Diamonds
JSN UK		345,517	79,909	269,935.19	62,428.90	188,677.73	43,636.19
JSN US		5,756,053	-	4,496,916.31	-	3,475,541.54	-
JSN CA		333,109	6,569	260,241.38	5,132.03	200,385.86	3,951.66
JSN Group		6,434,679	86,478	5,027,092.87	67,560.93	3,864,605.13	47,587.86



**TAB CC**

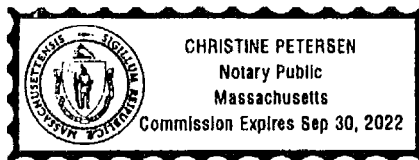




Attached is Exhibit "CC" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public





# AIRD & BERLIS LLP

Barristers and Solicitors

Ken Rosenstein  
Direct: 416.865.3427  
E-mail: krosenstein@airdberlis.com

885

June 10, 2016

Our File No.: 131783

VIA EMAIL (fsulley@torkinmanes.com)

Torkin Manes LLP  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7

Attention: Fay Sulley

Dear Sirs/Mesdames:

**Re: Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp. and Ben Moss Jewellers Western Canada Ltd. (the "Borrowers")**

As you are aware, we are counsel to Salus Capital Partners, LLC ("**Salus**") in connection with its lending arrangements with the Borrowers pursuant to: (i) a Credit Agreement dated as of July 18, 2013 among, Salus as administrative agent and collateral agent, the lenders thereunder, the Borrowers and the guarantors thereunder; and (ii) a Super Priority DIP Credit Agreement dated May 16, 2016 between Salus, as administrative and collateral agent, the lenders thereunder, Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**"), as borrower, and the guarantors thereunder.

We are in receipt of your letter to Salus dated June 7, 2016, wherein you refer to a vague and non-binding expression of interest by an undisclosed client of [REDACTED] who may be interested in acquiring part of the debt and security held by Salus in respect of the Borrowers (other than Ben Moss).

As you are already aware and refer to in your letter, there is a Refinancing and/or Investment Solicitation Process (the "**RISP**") which was ordered and approved by the Ontario Superior Court of Justice (Commercial List) on May 17, 2106 in the CCAA proceedings of Ben Moss (the "**CCAA Proceedings**"). The stated purpose of the RISP is to seek proposals for, among other things, a possible refinancing of *all or part* of the credit facilities provided to the Borrowers by Salus. The transaction referred to in your letter falls squarely within the scope of the RISP and therefore must, along with all other offers, be made to the Monitor in the CCAA Proceedings in accordance with the RISP.

Yours truly,  
**AIRD & BERLIS LLP**



By: Kenneth R. Rosenstein  
KRR/sb/ns

- c. *Sam Babe, Aird & Berlis LLP*  
*Kyle Shonak, Salus Capital Partners, LLC (kshonak@saluscapital.com)*  
*Larry Smith, Pace Credit Union (c/o Fay Sulley, Torkin Manes LLP)*  
*Adam Zalev, Alvarez & Marsal Canada Inc. (azalev@alvarezandmarsal.com)*  
*Natasha MacParland, Davies Ward Phillips & Vineberg LLP (nmacparland@dwpv.com)*  
*Harvey Chaiton, Chaitons LLP (harvey@chaitons.com)*  
*Narveed Manzoor, Faan Advisors (naveed@faanadvisors.com)*



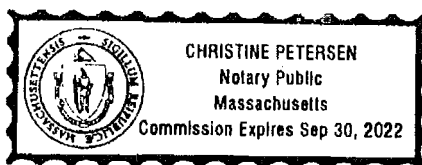
**TAB DD**



Attached is Exhibit "DD" Referred to in the  
AFFIDAVIT OF KYLE SHONAK  
Sworn before me this 3<sup>rd</sup> day of August, 2016

Christine Petersen

Notary Public







# AIRD & BERLIS LLP

Barristers and Solicitors

Ken Rosenstein  
Direct: 416.865.3427  
E-mail: krosenstein@airdberlis.com

887

June 29, 2016

Our File No.: 131783

VIA EMAIL (fsulley@torkinmanes.com)

Torkin Manes LLP  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7

Attention: Fay Sulley

Dear Sirs/Mesdames:

Re: **Salus Capital Partners, LLC Loans to J.S.N. Jewellery Inc. et al**

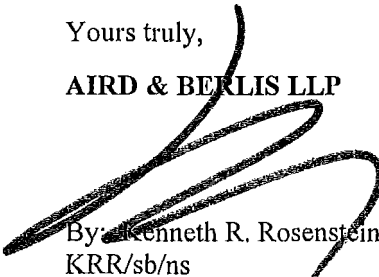
As you are already aware, we are counsel to Salus Capital Partners, LLC ("Salus") in connection with its lending arrangements with J.S.N. Jewellery UK Limited ("JSN"), GMJ Corp. ("GMJ") and Ben Moss Jewellers Western Canada Ltd. ("Ben Moss", and together with JSN, JSN UK and GMJ, the "Borrowers") pursuant to: (i) a Credit Agreement dated as of July 18, 2013 among, Salus as administrative agent and collateral agent, the lenders thereunder, the Borrowers and the guarantors thereunder, as amended; and (ii) a Super Priority DIP Credit Agreement dated May 16, 2016 between Salus, as administrative and collateral agent, the lenders thereunder, Ben Moss, as borrower, and the guarantors thereunder, as amended.

We are writing in response to your non-binding conditional "letter of intent" dated June 22, 2016, sent on behalf of your client, [REDACTED] (whose principal you identify as [REDACTED]), which sets out terms on which you say [REDACTED] proposes to purchase all of Salus' debt and security in respect of the Borrowers other than Ben Moss, for a total purchase price of CAN\$ [REDACTED].

As you are well aware, the debt and security held by Salus in respect of Ben Moss cannot be easily extricated from the debt and security held in respect of the other Borrowers. If your client is interested in the business of such non-Ben Moss Borrowers, we urge you to submit a final binding, unconditional, all cash offer for the purchase of the assets of those Borrowers, with sufficient evidence of committed financing, by no later than 5:00 p.m. next Wednesday, July 6, 2016, which we will evaluate in light of all other offers.

Yours truly,

AIRD & BERLIS LLP

  
By: Kenneth R. Rosenstein  
KRR/sb/ns

- c. *Sam Babe, Aird & Berlis LLP*  
*Kyle Shonak, Salus Capital Partners, LLC (kshonak@saluscapital.com)*  
*Larry Smith, Pace Credit Union (c/o Fay Sulley, Torkin Manes LLP)*  
*Adam Zalev, Alvarez & Marsal Canada Inc. (azalev@alvarezandmarsal.com)*  
*Natasha MacParland, Davies Ward Phillips & Vineberg LLP (nmacparland@dwpv.com)*  
*Harvey Chaiton, Chaitons LLP (harvey@chaitons.com)*  
*Narveed Manzoor, Faan Advisors (naveed@faanadvisors.com)*



**TAB 7**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**SALUS CAPITAL PARTNERS, LLC**

Applicant

and

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ  
CORP., 2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY  
COLLECTION INCORPORATED AND P.M.R. INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF MICHAEL A. O'HARA  
(sworn August 2, 2016)**

I, **MICHAEL A. O'HARA**, of the Town of Westwood, in the County of Norfolk, Commonwealth of Massachusetts, U.S., **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the founder, chief executive officer and managing member of Consensus Advisory Services LLC and Consensus Securities LLC (collectively, "**Consensus**"). Consensus was engaged as of May 24, 2016 by Salus Capital Partners, LLC, in its capacity as administrative and collateral agent to the Respondent's secured lenders ("**Salus**"), to serve as Salus's financial advisor to advise regarding sale and/or restructuring alternatives relating to J.S.N. Jewellery Inc. ("**JSN**") and its affiliate Ben Moss Jewellers Western Canada Ltd ("**Ben Moss**") (JSN and Ben Moss are sometimes referred to herein as the "**Company**"). Consensus was retained to advise Salus regarding possible sources of capital or operating partners to facilitate the Company's restructuring (a "**Restructuring Transaction**"), (ii) identifying possible strategic or financial



acquirers of all or part of the Company (a “**Sale Transaction**” and, when considered together with or in lieu of a Restructuring Transaction, a “**Transaction**”) and (iii) participating on the Salus’s behalf in negotiations concerning any such Transaction. Due to my role at Consensus, I have knowledge of the matters to which I hereinafter depose, except where the information set out below is based upon the information I have received from others, in which case I have stated the source of that information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of and application by Salus for an Order (the “**Approval and Vesting Order**”), among other things, (i) approving the sale transaction (the “**Chosen Transaction**”) contemplated by an Offer to Purchase (the “**Purchase Agreement**”) dated August 2, 2016 by Unique Designs, Inc. (the “**Purchaser**”) for the sale and purchase of certain assets of JSN, JSN UK, GMJ and AFFC, (ii) authorizing and directing Richter Advisory Group Inc. (“**Richter**”) to execute the Purchase Agreement upon its court-appointment as receiver of the Respondents (the “**Receiver**”) , and (iii) vesting in the Purchaser all of JSN’s right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”).

#### **BACKGROUND ON CONSENSUS**

3. Consensus is a boutique investment banking and financial advisory firm focused exclusively on the retail and consumer product markets. Importantly, Consensus has extensive transactional and advisory experience in the global diamond and jewelry sector, having advised at least 40 clients in the sector in the last 10 years. Consensus's professionals also have extensive experience working with distressed companies that are in the process of restructuring both formally and informally and have worked in various capacities with respect to our restructuring clients, including seeking strategic partners and/or selling their assets. In past mandates, Consensus has been responsible for, among other things, identifying buyers, marketing assets, conducting auctions and negotiating sale terms.

4. Consensus has substantial experience as an investment banker, financial advisor and/or management consultant in multiple United States Chapter 11 and Chapter 7 bankruptcy cases including the following cases related to retail and consumer products companies: *In re Frederick’s of Hollywood, Inc. et al*, Case No. 15-10836 (KG) (Bankr. Del. April 2015); *In re*





*Karmaloop, Inc. et al*, Case No. 15-10635 (MGW) (Bankr. Del. March 2015); *In re Love Culture Inc.*, Case No. 14-24508 (NLW) (Bankr. NJ. July 2014); *In re Bakers Footwear Group, Inc.*, Case No. 12-49658-705 (Bankr. E.D. MO October 2012); *In re Connaught Group, Ltd.*, Case No. 12-10512 (SMB) (Bankr. S.D.N.Y. March 2012); *In re: RoomStore, Inc.* Case No. 11-37790 (DOT) (Bankr. E.D. Va. December 2011); *In re The Rugged Bear Company*, Case No. 11-10577 (HJB) (Bankr. D. Mass. January 2011); *In re Ultra Stores, Inc.*, Case No. 09-11854 (BRL), (Bankr. S.D.N.Y. April 2009); *In re Lexington Jewelers Exchange, Inc., d/b/a Alpha Omega Jewelers*, Case No. 08-10042 (WCH) (Bankr. D. Mass. January 2008); *In re L.I.D., Ltd.*, Case No. 07-10725 (JMP) (Bankr. S.D.N.Y. March 2007); *In re: Tyringham Holdings*, Case No. 06-32385 (DOT) (Bankr. E.D. Va. September 2006); *In re: M. Fabrikant & Sons et. al.*, Case No. 06-12737 (SMB) (Bankr. S.D.N.Y. November 2006); among others. Earlier this year, we also advised the Debtors in Danier Leather Inc.'s recent CCAA proceeding before the Ontario Superior Court of Justice (Commercial List) (Court File No. 31-CL-2084381).

5. In addition, in the last several years Consensus has worked on many financial advisory and investment banking engagements for retail and consumer products companies that did not involve a court involved restructuring process including Spence Diamonds, Ltd. (a diamond jewelry retailer based in Vancouver, B.C.), Gemvara, Inc. (an online seller of customized gemstone jewelry), Aerogroup International, Inc. (doing business as Aerosoles), XCEL Brands, Conway Stores, Inc., CIRCA Inc. (a seller of pre-owned jewelry), PLV Studio, Inc., W. Thomas Co. (doing business as Bills Khakis), Sequential Brands Group, Inc. and Diamlink, Inc. (a diamond and jewelry wholesaler) and Excelsior Capital Partners (a lender to the diamond and jewelry industry).

6. I believe that Consensus and its team has vast experience in the consumer products and retail sector through which it has developed an understanding of, and relationships with, the key strategic and financial investors, lenders and liquidators in the market, within the United States, Canada and abroad.

7. Background information about me and my colleagues Mark Lenz and Elizabeth "Betsy" White, who assisted me on this transaction can be found on our website here:



[www.consensusadvisors.com](http://www.consensusadvisors.com) under the Leadership tab by clicking the “i” icon on each person’s picture.

8. Previously, on January 21, 2013, Consensus was retained by Salus to perform a field audit on JSN and Ben Moss Jewellers Western Canada Ltd. (“**Ben Moss**”) as part of a loan transaction whereby Salus provided substantial capital to JSN to enable it to acquire Ben Moss. In late February, 2013, we provided the field audit report to Salus. Accordingly, Consensus had familiarity with JSN and Ben Moss when our engagement began in May 2016, though we had not monitored the Company in any substantive way in at least two years.

#### **SALE OF JSN’S BUSINESS**

9. I have been advised by representatives of A&M Canada Securities ULC (“**A&M Corporate Finance**”) that it was engaged by JSN in August 2015 to initiate a process to effectuate a refinancing of the Salus credit facilities. A&M Corporate Finance prepared marketing materials and an electronic data room, both of which we were given access to shortly after our engagement, and we understand they reached out to a significant number of parties seeking to refinance the debt owing to Salus and/or to acquire the Company.

10. We believe that, while A&M was successful in attracting parties to consider such a refinancing, the financial condition of JSN, its manner of operating, and unfavorable macroeconomic conditions impacting a meaningful number of the Ben Moss stores, contributed to no parties consummating such a deal.

11. In particular, JSN was highly leveraged when we were retained, and was not generating positive net cash flows. Its manufacturing operations were in Thailand, and its Thai factory required prepayment for goods and materials. By the time of our engagement in May 2016, JSN was significantly over-advanced in its loan from Salus, and Salus was refusing to advance further funds to JSN’s Thai factory, which I understood also had significant unpaid third party liabilities.

12. A significant part of JSN’s business is the sale of jewelry “programs” to significant jewelry retailers in the US, Canada and the United Kingdom. In addition to Ben Moss (which JSN owns), JSN’s most significant customers are Fred Meyer Jewelers (a division of supermarket giant Kroger in the US), Rogers & Hollands (US), Charm Diamond (Canada) and



Goldsmith's (UK). Jewelry programs are families of similarly designed jewelry pieces that typically appear together in a retail jeweler's showcases in their stores and are grouped together as a category on the retail customer's website. These items are often given a program tradename and have consistent marketing associated with them. Jewelry retailers rely on their important vendors to supply a sufficient quantity of program goods and to replenish these goods on a timely basis so that they can continuously satisfy their customer base.

13. An important element of jewelry programs generally is that the retailer often requires a significant amount of the program product to be supplied "on memo." Product on memo with a retailer is consigned to the retailer, with the wholesaler maintaining title. As the product sells on the retailer's shelves, the product "converts" from memo to "asset" and the retailer has an agreed upon period of days to pay the vendor after the product is sold to the end consumer. As of July 23, 2016, JSN has approximately CAN\$7.2 million of goods out on memo to its third-party customers (i.e. excluding Ben Moss), with the largest account being with Fred Meyer.

14. JSN's key jewelry program with these retailers is branded "Canadian Ice". Canadian Ice incorporates diamonds mined from Canada, which are perceived by retailers and their customers to lack the problematic issues of provenance sometimes found in diamonds mined in Africa (such as so-called "conflict diamonds" thought to fund guerilla wars), into jewelry pieces made in Thailand. JSN has other program arrangements in addition to the Canadian Ice program.

15. I understand that, while Salus occasionally funded certain purchases in recent periods, its general unwillingness to continue to fund JSN's Thai factory (in the face of an already significant over-advance, an absence of any security over the Thai assets, and other factors resulted in JSN being unable to acquire products from its Thai factory to fully replenish these programs. As a result, Salus, A&M Corporate Finance and others at JSN feared JSN's retail customers would discontinue programs with JSN and replace JSN with healthier vendors.

16. Indeed, JSN's CRO informed us that, at the jewelry industry's leading trade shows, which took place in back-to-back weeks in early June in Las Vegas (the Couture and JCK Shows), certain key vendors told JSN representatives that they had heard rumors JSN was in financial distress. Some of this was due to Ben Moss' filing for protection by under the *Companies' Creditors Arrangement Act* (the "CCAA"). Reportedly, some of JSN's biggest



customers, most notably Fred Meyer Jewelers, threatened to shift programs away from JSN if the Company did not promptly deliver previously ordered goods.

17. The loss of jewelry programs for wholesalers like JSN is highly problematic for the company and its lenders. When a retailer program is discontinued, the retailer often sends back all items in its possession – especially the items it holds “on memo” – and looks for aggressive reasons to chargeback the wholesaler’s accounts receivable. These returns and chargebacks are rare (or at least less draconian) when the retailer and the wholesaler are partners in an ongoing program. As previously mentioned, as of July 23, 2016, JSN has approximately CAN\$7.2 million of goods at cost out on memo with its third-party customers, and has outstanding accounts receivable as of July 23, 2016 of approximately CAN\$9 million.

18. Moreover, we understand that prior to our engagement, relations between Salus and JSN’s owner were deteriorating and Salus believed JSN’s owner intended to try to buy Salus’s debt at a significant discount. Because of this, Salus advised us that they did not believe JSN’s owner would facilitate a transaction that would optimize Salus’s recovery, and they felt they could not rely on him to assist with the due diligence of third parties.

19. Salus therefore asked Consensus for our views of ways to optimize JSN’s assets. Through discussions with A&M Corporate Finance, we concluded that it was unlikely that any party would acquire or invest in the business in the traditional sense. We believed, however, that a larger diamond company may be interested in succeeding JSN as the provider of the programs and, if they could do so in a timely fashion, such parties would enable the ordinary course sale of JSN’s goods on memo as well as the collection of its accounts receivable. We also believed that such parties would have interest in acquiring JSN’s intellectual property and potentially hiring some of its employees and agents.

20. We then reached out to some of the world’s largest diamond and jewelry companies with whom we had a pre-existing relationship to gauge their interest in such an idea. Key to these discussions was their interest and competency in programs using these specific goods and their ability to move extremely quickly. We reached out to seven such parties: [REDACTED] the Purchaser (Unique Designs, Inc.), [REDACTED] ([REDACTED]), [REDACTED] (an affiliate of [REDACTED]), [REDACTED], [REDACTED]





and [REDACTED] (a subsidiary of [REDACTED]). In addition, A&M Corporate Finance reached back out to some of the parties they previously contacted about this strategy. From these two lists, the Purchaser, [REDACTED], [REDACTED] and [REDACTED] (“[REDACTED]”) each engaged in discussions.

21. All four of these parties signed confidentiality agreements in favour of JSN, and the CRO, through A&M Corporate Finance and Consensus, provided them with significant information about JSN’s historical sales, inventory on hand, goods on memo, intellectual property and gross margins. These interested parties were also given access to the data room maintained by A&M Corporate Finance.

22. In mid-June (a couple of weeks after the industry trade shows), with virtually no new goods coming in to support programs, it was becoming clear that JSN needed to show a go forward plan to its key retail customers or risk losing their business and the programs altogether. As a result, we expedited conversations with the interested parties and, on June 29, 2016, entered into a letter of intent with [REDACTED]. This letter of intent provided [REDACTED] with two weeks of exclusivity to conduct further due diligence and provide acceptable definitive legal documentation.

23. [REDACTED] did not provide definitive documentation before the end of the exclusivity period and it was clear that they still needed to complete certain due diligence and doubtful that their due diligence would result in an actual transaction being consummated. As a result, we re-started discussions with the other interested parties and asked them to provide new, binding bids containing no contingencies by noon on Friday July 15, 2016.

24. We received three bids by this deadline, including the [REDACTED] bid which remained open. Copies of the bids are attached **Exhibit “A”** to this Affidavit. The Purchaser’s bid was chosen as it provided improved economics over the [REDACTED] letter of intent and was the only one that removed all contingencies. Moreover, the Purchaser represented to us that it is the largest vendor to JSN’s largest third-party customer, Fred Meyer Jewelers. This provided us with great assurance that JSN’s risks with regard to the memo and receivables associated with the Fred Meyer programs would be mitigated.



25. In contrast, the third bidder, Renaissance, had not conducted any due diligence, had no pre-existing relationships with any of JSN's key customers and provided no evidence of its ability or financial wherewithal to conclude a transaction.

26. The Purchaser signed a letter of intent with JSN and Salus on Saturday, July 16, 2016, and then delivered the fully negotiated and executed Purchase Agreement on August 2, 2016, an unredacted copy of which is attached as **Exhibit "B"** to this Affidavit. The Purchase Agreement calls for the Purchaser to:

- (a) continue JSN's retailer programs;
- (b) acquire all of JSN's goods on memo for █% of the cost value thereof;
- (c) acquire finished goods associated with purchase orders for █% of the cost value thereof;
- (d) acquire JSN's trademarks for \$█(USD); and
- (e) consider acquiring finished goods on hand at JSN not associated with purchase orders for programs.

#### **SALE OF SUNDRY ASSETS**

27. JSN maintains certain diamonds and jewelry in its vaults at its headquarters that do not necessarily relate to ongoing retailer programs. We have been advised that these diamonds and jewelry items may have been brought to Toronto simply to serve as inventory on JSN's borrowing base so that it would enable greater borrowings from Salus. We refer to these assets, as well as JSN's furniture, fixtures and equipment, as the "**Sundry Assets**" herein.

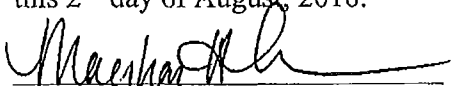
28. Given the exigency of preserving the existing programs (and therefore optimizing the value of JSN's memo goods and accounts receivable), and the fact that the Sundry Assets have little to no risk of spoilage (indeed, they may increase in market value since they are commodity-price driven) and no meaningful direct costs associated with maintaining them, we felt the sale of the Sundry Assets could be managed at a more normal pace than the sale of the ongoing business.




29. Accordingly, Consensus proposed that the Sundry Assets be sold pursuant to a sale process to be conducted by the Receiver, once appointed.


30. This Affidavit is made in support of the within application for, among other things, the approval of the Chosen Transaction, and for no other or improper purpose whatsoever.

SWORN before me at the Town of )  
Norwood, in the County of Norfolk, )  
this 2<sup>nd</sup> day of August, 2016. )

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
Michael A. O'Hara



COMMONWEALTH OF MASSACHUSETTS  
Michael O'Hara  
personally appeared before me, the undersigned notary public, and  
proved to me his/her identity through satisfactory evidence, which  
were personally known to me to be the person  
whose name is signed on the preceding or attached document in my  
presence on this 2 day of August, 2016.  
  
MAEGHAN H. THOMPSON, Notary Public  
My Commission Expires April 25, 2019



**SALUS CAPITAL PARTNERS, LLC**

and

**J.S.N. JEWELLERY INC., et al.**

Applicant

Respondents

Court File No. CV-16-~~XXXX~~-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**AFFIDAVIT OF MICHAEL O'HARA  
(sworn August 2, 2016)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**Sam Babe (LSUC # 49498B)**  
Tel: 416.865.7718  
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**Miranda Spence (LSUC #60621M)**  
Tel: 416-865-3414  
Fax: 416.863.1515  
Email: mspence@airdberlis.com









**SALUS CAPITAL PARTNERS, LLC**

Applicant

and

**J.S.N. JEWELLERY INC., et al.**

Respondents

Court File No. CV-16-~~11~~-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceedings commenced at Toronto

**AFFIDAVIT OF MICHAEL O'HARA**  
(sworn August 2, 2016)

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
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181 Bay Street  
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*Lawyers for Salus Capital Partners, LLC*



**TAB 8**



Court File No. CV-16-011478-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**SALUS CAPITAL PARTNERS, LLC**

Applicant

and

**J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ  
CORP., 2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY  
COLLECTION INCORPORATED AND P.M.R. INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**CONSENT**

The undersigned, Richter Advisory Group Inc. ("Richter"), hereby consents to the appointment of Richter as receiver, without security, of all of the assets, undertakings and property of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp., 2373138 Ontario Inc., Always & Forever Family Collection Incorporated and P.M.R. Inc., pursuant to the provisions of subsections 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, in accordance with an order substantially in the form filed in the above proceeding, or as such order may be amended in a manner satisfactory to Richter.

DATED at Toronto, this 7<sup>th</sup> day of August, 2016.

**RICHTER ADVISORY GROUP INC.**

Per:



Name: ADAM SHERMAN

Title: SENIOR VICE PRESIDENT





**SALUS CAPITAL PARTNERS, LLC**

- and -

**J.S.N. JEWELLERY INC., et al**

Applicant

Respondents

Court File No. CV-16-011478-00CL

**ONTARIO  
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**CONSENT**

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*Lawyers for Salus Capital Partners, LLC*



**TAB 9**



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*Lawyers for Salus Capital Partners, LLC*

**AND TO:**   **J.S.N. JEWELLERY INC.**  
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**Attention: Michael De Lellis/Karen Sachar**  
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Fax: (416) 862-6666  
Email: [mdelellis@osler.com](mailto:mdelellis@osler.com) / [ksachar@osler.com](mailto:ksachar@osler.com)

*Lawyers for the Respondents*



**AND TO: RICHTER ADVISORY GROUP INC.**

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*Proposed receiver*

**AND TO: FASKEN MARTINEAU DUMOULIN LLP**

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333 Bay St., Suite 2400  
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**Attention: Stuart Brotman/Aubrey Kauffman**  
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*Lawyers to the proposed receiver*

**AND TO: STIKEMAN ELLIOTT LLP**

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*Lawyers to Unique Designs, Inc.*





**AND TO: CHANG ADVOCACY PROFESSIONAL CORPORATION**  
Suite 407, 989 Derry Road East  
Mississauga, ON L5T 2J8

**Attention: Charles Chang**  
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*Lawyers to Joseph Shilon*

**AND TO: DEPARTMENT OF JUSTICE**  
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**Attention: Diane Winters**  
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**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE  
(Income Tax, PST)**  
P.O. Box 620  
33 King Street West, 6<sup>th</sup> Floor  
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**Attention: Kevin J. O'Hara**  
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**Attention: Lorraine Hensberger**  
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**AND TO: NATIONAL LEASING GROUP INC.**  
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**AND TO: HALTON AUTOLEASE INC.**  
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Burlington, ON L7L 0C1

**AND TO: THE ARGEN CORPORATION**  
5855 Oberlin Drive  
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**Attention: Joe Rosen**  
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**SALUS CAPITAL PARTNERS, LLC**  
Applicant

and

**J.S.N. JEWELLERY INC. et al.**  
Respondents  
Court File No. CV-16-011478-00CL

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**APPLICATION RECORD**  
(returnable August 11, 2016)  
(VOLUME II OF II)

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