

**EXTENDIBLE REVOLVING AND TERM CREDIT FACILITIES**

**CREDIT AGREEMENT**

made among

**CCS INC. and  
CCS OPERATIONS LIMITED PARTNERSHIP,**  
as Borrowers

and

**THE TORONTO-DOMINION BANK,**  
and those other banks and financial institutions  
from time to time party hereto,  
as Lenders

and

**THE TORONTO-DOMINION BANK,**  
as Agent for the Lenders, Lead Arranger and Book Manager

DATED AS OF JANUARY 3, 2006

**THIS CREDIT AGREEMENT** is made as of the 3<sup>rd</sup> day of January, 2006.

**AMONG:**

**CCS INC. and  
CCS OPERATIONS LIMITED PARTNERSHIP,**  
as Borrowers

- and -

**THE TORONTO-DOMINION BANK,**  
and those other banks and financial institutions  
from time to time party hereto,  
as Lenders

- and -

**THE TORONTO-DOMINION BANK,**  
as Agent for the Lenders

**WHEREAS:**

A. CCS, certain of the Lenders and the Agent are parties to the third amended and restated credit agreement dated as of November 15, 2004, as supplemented and amended by the first amendment to credit agreement dated as of March 24, 2005 (as so supplemented and amended, the "**Prior CCS Credit Agreement**") pursuant to which the Lenders thereunder made available to CCS certain extendible revolving and term credit facilities (the "**Prior CCS Credit Facilities**") on the terms and subject to the conditions set forth in the Prior CCS Credit Agreement;

B. CCS has proposed that the Prior CCS Credit Facilities be restructured to reflect a reorganization of the CCS corporate/trust group, and the Lenders and the Agent have agreed to restructure the Prior CCS Credit Facilities on the terms and subject to the conditions set forth in this Agreement; and

C. The Lenders wish the Agent to continue to act on their behalf with regard to certain matters contemplated by this Agreement.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

## **ARTICLE I** **INTERPRETATION**

### **1.1 Definitions**

In this Agreement, including the recitals and the Schedules hereto and in all notices given pursuant to this Agreement, unless something in the subject matter or context is inconsistent therewith, the following words and phrases shall have the following meanings:

**"Acceleration Notice"** means a written notice delivered by the Agent to the Borrowers pursuant to Section 9.2 declaring all or any of the Obligations outstanding hereunder to be due and payable.

"**Acquisition**" means, with respect to any Borrower or Material Entity, the acquisition for value of: (i) greater than fifty percent (50%) of the voting shares or other securities of any person, or (ii) a majority of the cash-flow generating assets (other than under operating leases) of any person.

"**Additional Compensation**" has the meaning ascribed thereto in Section 12.9(a).

"**Administrator**" means CCS Inc., acting in its capacity as duly authorized administrator of the Income Trust, or any successor thereto in such capacity.

"**Administration Agreement**" means the administration agreement dated as of May 22, 2002 made between the Administrator and Computershare, acting solely in its capacity as the trustee of the Income Trust, relating to administration of the Income Trust, as supplemented, amended, restated or replaced from time to time.

"**Advance**" means a borrowing by a Borrower by way of a Prime Rate Advance (including by way of Overdraft), a US Base Rate Advance (including by way of Overdraft), a LIBOR Advance, acceptance of a Bankers' Acceptance, a BA Equivalent Loan or the issuance of a Letter of Credit, including deemed Advances and Conversions, renewals and Rollovers of existing Advances, and any reference relating to the amount of Advances shall mean the sum of the principal amount of all outstanding Prime Rate Advances, the Equivalent Amount in Cdn Dollars of all outstanding US Base Rate Advances and LIBOR Advances, plus the Face Amount of all outstanding Bankers' Acceptances and Notional Bankers' Acceptances, and the stated amount of all Letters of Credit.

"**Affiliate**" means any person which, directly or indirectly, controls, is controlled by or is under common control with another person, and for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" or "under common control") means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of Shares or by contract or otherwise.

"**Agent**" means TD, in its capacity as administration agent for the Lenders, and includes any successor agent appointed pursuant to Section 10.11.

"**Agent's Account**" means the applicable accounts of the Agent maintained from its main branch or office in Toronto, Ontario, as follows:

- (a) for Canadian Dollars: TD Bank, Toronto  
SWIFT - TDOMCATTOR  
Cdn\$ Account No. 0360-01-2301253  
Favor - TD Bank Toronto, Corporate Lending  
Reference - CCS
- (b) for US Dollars: Bank of America, New York  
SWIFT - BOFAUS3N  
US\$ Account No. 6550-826-336  
Account with: TD Bank, Toronto  
SWIFT - TDOMCATTOR  
Favor - TD Bank Toronto, Corporate Lending  
US\$ Account No. 0360-01-2301447  
Reference - CCS

"**Agreement**", "**hereof**", "**herein**", "**hereto**", "**hereunder**" or similar expressions mean this credit agreement and any schedules hereto, as amended, supplemented, restated or replaced from time to time.

"**Amalgamation**" means the amalgamation of CCS, 1076713, HAZCO and WasteWorks effective on January 1, 2006 to form CCS as amalgamation successor corporation.

"**Ancillary Facilities**" has the meaning ascribed thereto in Section 2.27.

"**Applicable Law**" means, in relation to any person, transaction or event:

- (a) all applicable provisions of laws, statutes, rules, policies and regulations of any Governmental Authority in effect from time to time having force of law; and
- (b) all judgments, orders, awards, decrees, official directives, writs and injunctions all having force of law from time to time in effect of any Governmental Authority in an action, proceeding or matter in which the person is a party or by which it or its property is bound or having application to the transaction or event.

"**Applicable Lenders**" means (i) in the context of the Swingline Facility, only the Swingline Lender, and (ii) in the context of all Facilities other than the Swingline Facility, all Lenders who have a Proportionate Share of any such Facilities.

"**Applicable Margin**" means, at any time, the percentage margin or rate as set forth in the table below in respect of the Swingline Facility or Facility A:

Type of Accommodation	Funded Debt to EBITDA Ratio				
	< 1.25 to 1.0	≥ 1.25 to 1.0 but < 1.50 to 1.0	≥ 1.50 to 1.0 but < 1.75 to 1.0	≥ 1.75 to 1.0 but < 2.00 to 1.0	≥ 2.00 to 1.0
Prime Rate Margin	0.00%	0.25%	0.50%	0.75%	1.00%
US Base Rate Margin	0.00%	0.25%	0.50%	0.75%	1.00%
LIBOR Rate	1.00%	1.25%	1.50%	1.75%	2.00%
BA Rate	1.00%	1.25%	1.50%	1.75%	2.00%
LC Rate	1.00%	1.25%	1.50%	1.75%	2.00%
Commitment Fee Rate (where utilization ≥ 50%)	0.15%	0.175%	.20%	0.225%	0.25%
Commitment Fee Rate (where utilization < 50%)	0.20%	0.225%	.25%	0.275%	0.30%

For the purposes of this definition, the Funded Debt to EBITDA Ratio shall be calculated by the Borrowers and reported to the Agent in the Compliance Certificate provided by the Borrowers from time to time in respect of the applicable Fiscal Quarter end or Fiscal Year end in accordance with Section 8.3(c). The Lenders shall be entitled to rely on such calculation, and the Applicable Margin so determined shall be applied from and after the first day of the Fiscal Quarter of the Income Trust following the date that the Compliance Certificate was required to be delivered by the Borrowers; provided that (i) in the event that the Borrowers should fail to provide a Compliance Certificate in respect of the applicable Fiscal Quarter end or Fiscal Year end in accordance with Section 8.3(c) setting out the Funded Debt to EBITDA Ratio as and when required, then from and after the first day of the month next following the latest month in which the Borrowers were required to provide such Compliance Certificate, the Applicable Margin in all cases shall automatically be determined as if the

Funded Debt to EBITDA Ratio was " $\geq 2.0:1$ " until cured, and such deemed determination shall be final for all purposes hereof; and (ii) the Lenders shall be entitled to disagree with the Borrowers' calculation from time to time and in the event of any discrepancy in calculating such ratio as between the Borrowers, on the one hand, and the Lenders, on the other hand, the Lenders shall have the right to reassess and redetermine such ratio in their absolute discretion, acting reasonably.

"**Assignment Agreement**" means an agreement in the form of Schedule "F" attached hereto.

"**ATB**" means Alberta Treasury Branches.

"**BA Advance**" means the portion of an Advance effected by acceptance of a Bankers' Acceptance.

"**BA Discount Proceeds**" means, in respect of any Bankers' Acceptance where required to be purchased by a Lender hereunder, an amount (rounded to the nearest whole cent with one-half of one cent being rounded-up) determined as of the applicable Drawdown Date, Conversion Date or Rollover Date which is equal to:

$$\frac{\text{Face Amount} \times \text{Price}}{100}$$

where "Face Amount" is the face amount of such Bankers' Acceptance and "Price" is equal to:

$$\frac{100}{1 + (\text{Rate} \times \frac{\text{Term}}{365})}$$

where "Rate" is the applicable BA Discount Rate expressed as a decimal on the day of purchase; "Term" is the term of such Bankers' Acceptance expressed as a number of days; and Price as so determined is rounded up or down to the fifth decimal place with .000005 being rounded-up.

"**BA Discount Rate**" means:

- (a) with respect to Bankers' Acceptances accepted by a BA Lender that is a bank under Schedule I of the *Bank Act* (Canada), the CDOR Rate; and
- (b) with respect to Bankers' Acceptances accepted by a BA Lender that is not a bank under Schedule I of the *Bank Act* (Canada), the lesser of (i) the CDOR Rate plus 10 bps, and (ii) that BA Lender's quoted discount rate; provided that if such BA Lender (as at approximately 10:00 a.m. (Toronto time) on such day) does not furnish a timely quotation, the Agent shall determine the relevant discount rate on the basis of the CDOR Rate only, which determination by the Agent shall be conclusive and binding, absent manifest error.

"**BA Equivalent Loan**" has the meaning ascribed thereto in Section 2.14(b).

"**BA Fee**" means the amount calculated by multiplying the Face Amount of a Bankers' Acceptance by the applicable BA Rate, and then multiplying the result by a fraction, the numerator of which is the number of days to elapse from and including the date of acceptance of such Bankers' Acceptance by a BA Lender up to but excluding the maturity date of such Bankers' Acceptance, and the denominator of which is 365.

"**BA Lender**" means any Lender which is a bank chartered under the *Bank Act* (Canada) and which stamps and accepts Bankers' Acceptances.

**"BA Rate"** means, from time to time in respect of an acceptance of a Bankers' Acceptance or a BA Equivalent Loan, the applicable percentage rate per annum indicated beside the reference to "BA Rate" in the table to the definition of "Applicable Margin".

**"Bankers' Acceptance"** means an accommodation made available to a Borrower by way of a bankers' acceptance denominated in Canadian Dollars drawn by such Borrower and accepted by a BA Lender, and issued for value pursuant to this Agreement.

**"BMO"** means Bank of Montreal.

**"Borrower"** means, as the context requires: (i) CCS and/or the Partnership in respect of the Swingline Facility, (ii) CCS and/or the Partnership in respect of Facility A other than the Swingline Facility, and (iii) CCS in respect of Facility B; and **"Borrowers"** means, collectively, CCS and the Partnership.

**"Borrowers' Account"** means, as the context requires, the Borrowers' CCS Account, the Borrowers' LP Account or the Borrowers' Swingline Account.

**"Borrowers' CCS Account"** means the applicable accounts of CCS, in Cdn\$ or US\$, maintained at the TD main branch or office in Calgary, Alberta, in respect of non-Swingline matters.

**"Borrowers' Counsel"** means Burnet, Duckworth & Palmer LLP, and/or such other firm of solicitors qualified to practice law in each applicable Relevant Jurisdiction acceptable to the Agent, acting reasonably, as the Borrowers may from time to time designate.

**"Borrowers' LP Account"** means the applicable accounts of the Partnership, in Cdn\$ or US\$, maintained at the TD main branch or office in Calgary, Alberta, in respect of non-Swingline matters.

**"Borrowers' Swingline Account"** means the applicable accounts of the Borrowers, in Cdn\$ or US\$, maintained at the Swingline Lender's main branch or office in Calgary, Alberta, in respect of Swingline matters.

**"bps"** means one one-hundredth of one percent.

**"Business Day"** means a day of the year, other than a Saturday, Sunday or statutory holiday, on which each Lender is open for business at its main branch or office in Calgary, Alberta and Toronto, Ontario, and (i) in respect of any payments made hereunder in US Dollars, a day on which banking institutions are also open for business in New York, New York, or (ii) in respect of any LIBOR Advance, a day on which the Agent's principal office in London, England is open for business.

**"Canadian Dollars", "Cdn Dollars", "Cdn\$" and "\$"** each mean lawful money of Canada.

**"Capital Lease"** means, with respect to any person, any lease or other arrangement relating to real or personal property which should, in accordance with GAAP, be required to be classified and accounted for as a capital lease on the consolidated balance sheet of such person and its subsidiaries, whether synthetic or otherwise, but excluding any lease that would in accordance with GAAP be determined to be an operating lease.

**"Capitalization"** means, in respect of the Income Trust on a consolidated basis, Funded Debt, plus (i) any Subordinated Convertible Debenture Debt, and (ii) unitholder equity in the Income Trust.

**"CavernCo"** means CCS Caverns Limited, an Alberta corporation.

"CCS" means (i) CCS Inc., an Alberta corporation, as it existed prior to the Amalgamation becoming effective, and (ii) from and after the Amalgamation becoming effective, CCS Inc., an Alberta corporation, as the successor corporation resulting from the Amalgamation; in each case having its chief executive office in Calgary, Alberta.

"**CDOR Rate**" means, on any day, the arithmetical average of the percentage discount rates (expressed to three decimal places, calculated on the basis of a year of 365 days) for Canadian Dollar bankers' acceptances in comparable amounts having an identical issue date and a comparable maturity date to the Bankers Acceptances proposed to be issued by a Borrower which is quoted on the "Reuters' Screen CDOR Page" (as defined in the International Swaps and Derivatives Association, Inc. definitions, as modified and amended from time to time) for acceptances of Schedule I banks under the *Bank Act* (Canada) (or if such screen shall not be available any successor or similar service selected by the Agent) as at approximately 10:00 a.m. (Toronto time) on such day, or if such day is not a Business Day, then on the immediately preceding Business Day (as adjusted by the Agent in good faith after 10:00 a.m. (Toronto time) or as soon thereafter as practicable to reflect any error in a posted rate of interest or in the posted average annual rate of interest). If neither such screen nor any successor or similar service is available, then the "CDOR Rate" shall mean the percentage discount rate (expressed to three decimal places, calculated on the basis of a year of 365 days) determined by the Agent to be the average of the quoted discount rates at which Canadian Dollar bankers' acceptances in comparable amounts having an identical issue date and a comparable maturity date are being bid for discount by the BA Lenders which are Schedule I banks under the *Bank Act* (Canada) at approximately 10:00 a.m. (Toronto time) or so soon thereafter as practicable on the day of the acceptance and purchase of the Bankers' Acceptances hereunder. If any BA Lender does not furnish a timely quotation, the Agent shall determine the relevant discount rate on the basis of the quotation or quotations furnished by the remaining BA Lenders. Each determination of the CDOR Rate shall be conclusive and binding, absent manifest error, and be computed using any reasonable averaging and attribution method.

"**Change of Control**" has the meaning ascribed thereto in Section 9.1(k).

"**CIBC**" means Canadian Imperial Bank of Commerce.

"**Collateral**" means cash, a bank draft or a letter of credit issued by a chartered bank referred to in Schedule I of the *Bank Act* (Canada), all in a form satisfactory to the Lenders, each acting reasonably.

"**Commitment**" means, in respect of each Lender from time to time, the Advances that such Lender has agreed to make as set out on Schedule "A" to this Agreement (which shall be amended and distributed to all parties by the Agent from time to time as other persons become Lenders or the Commitments of current or future Lenders are hereafter assigned, modified, cancelled, reduced, increased or otherwise changed pursuant to the provisions of this Agreement).

"**Commitment Fee Rate**" means, from time to time, in respect of the payment of commitment fees pursuant to Section 4.8, the applicable percentage rate per annum for the applicable Funded Debt to EBITDA Ratio beside the reference to "Commitment Fee Rate" in the table to the definition of "Applicable Margin", and dependent on the utilization level as indicated therein.

"**Commodity Swap**" means any transaction, arrangement or agreement entered into between a Borrower or a Material Entity and a counterparty, on a case by case basis, including a futures contract, a commodity option, a commodity swap, a forward sale or other similar commodity-related transaction, the purpose of which is to manage, mitigate or eliminate its exposure to fluctuations in commodity prices, including contracts settled by physical delivery of the commodity.

**"Compliance Certificate"** means a certificate of a Responsible Officer, for and on behalf of the Borrowers, required from time to time pursuant to Section 8.3(c), the form of which is attached hereto as Schedule "B".

**"Computershare"** means Computershare Trust Company of Canada, acting solely in its capacity as trustee of the Income Trust.

**"Conflicted Lender"** has the meaning ascribed thereto in Section 3.9(b).

**"Consolidated Current Assets"** means, in respect of the Income Trust, at the end of a Fiscal Quarter and as determined in accordance with GAAP on a consolidated basis, the aggregate amount shown as current assets of the Income Trust in the Financial Statements for such period.

**"Consolidated Net Current Liabilities"** means, in respect of the Income Trust, at the end of a Fiscal Quarter and as determined in accordance with GAAP on a consolidated basis, the aggregate amount shown as current liabilities of the Income Trust in the Financial Statements for such period, excluding without duplication: (i) the current portion of the Swingline Facility, Facility A and Facility B, (ii) the current portion of Long-Term Debt, and (iii) the current portion for purchase obligations and asset retirement obligations; but including (iv) any unpaid Distributions already declared or accrued.

**"Constating Documents"** means (i) with respect to a corporation, its articles of incorporation, amalgamation or continuance or other similar documents, and its by-laws, and (ii) with respect to any other person which is an artificial body, the organization and governance documents of such person; in each case as amended and supplemented from time to time.

**"Contributing Lender"** has the meaning ascribed thereto in Section 10.3(b).

**"Conversion"** means a conversion or deemed conversion of one type of Advance into another type of Advance pursuant to this Agreement, and **"converted"** and **"convert"** have corresponding meanings.

**"Conversion Date"** means a Business Day on which a Conversion is to be made pursuant to a Conversion Notice.

**"Conversion Notice"** means a notice to make a Conversion, substantially in the form of Schedule "C" attached hereto.

**"Credit Documents"** means this Agreement, the Security, each Bankers' Acceptance and Letter of Credit, and all other certificates, instruments, notices and documents delivered or to be delivered pursuant to this Agreement, in each case, as supplemented, amended, restated or replaced from time to time.

**"Creditor Proceedings"** means any dissolution, winding up, total or partial liquidation, plan of arrangement, receivership, insolvency, proposal, bankruptcy or compromise under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or the arrangement provisions of any applicable corporate law, or any general assignment for the benefit of creditors or similar proceedings offered with respect to a Borrower or any Material Entity, or their respective Property or liabilities.

**"Currency Swap"** means any transaction, arrangement or agreement entered into between a Borrower or a Material Entity and a counterparty, on a case by case basis, including a foreign exchange futures contract, a currency option, a currency swap, a currency exchange or other similar currency-related transaction, the purpose of which is to manage, mitigate or eliminate its exposure to fluctuations in currency exchange rates.

"**Current Ratio**" means, in respect of the Income Trust, at the end of a Fiscal Quarter and as determined in accordance with GAAP on a consolidated basis, the ratio of (i) Consolidated Current Assets to (ii) Consolidated Net Current Liabilities.

"**CWB**" means Canadian Western Bank.

"**DBNA**" means the *Depository Bills and Notes Act* (Canada).

"**Debt**" means, with respect to any person and without duplication, all Indebtedness of such person which would, in accordance with GAAP, be classified on a consolidated balance sheet as indebtedness for borrowed money, and whether or not so classified, shall include:

- (a) money borrowed (including by way of overdraft) or Indebtedness represented by notes payable and drafts accepted representing extensions of credit for borrowed money;
- (b) the face amount of bankers' acceptances and similar instruments not relating to the Facilities;
- (c) the stated amount of all letters of credit, letters of guarantee and surety bonds;
- (d) all obligations (whether or not with respect to the borrowing of money) that are evidenced by bonds, debentures, notes or other similar instruments, whether or not any such instruments are convertible into capital but including without limitation, any indebtedness or liabilities of such person that may be satisfied by the delivery of Shares of such person to the holder thereof or to another person on behalf of the holder, or that are not so evidenced but that would be considered by GAAP to be indebtedness for borrowed money;
- (e) all obligations upon which interest charges are customarily paid or payable by that person prior to payment of the principal amount of such obligations in accordance with the terms of such obligations;
- (f) all obligations for or in respect of the purchase of any property, assets or undertaking, the purchase price in respect of which has been prepaid by the purchaser;
- (g) all redemption obligations of such person with respect to any Shares (other than, (i) in the case of CCS, the Exchangeable Shares, and (ii) in the case of the Income Trust, the Income Trust Units) issued by such person and which are by their terms or pursuant to any agreement or arrangement (i) redeemable, retractable, payable or required to be purchased or otherwise retired or extinguished, or convertible into debt of such person, (A) at a fixed or determinable date, (B) at the option of any holder thereof, or (C) upon the occurrence of a condition not solely within the control and discretion of such person, or (ii) convertible into any other shares described in (i) above;
- (h) all principal obligations as lessee under sale and lease-back transactions and Capital Leases, or any other leases which in the opinion of the Agent acting reasonably is a financing lease (whether a synthetic lease or otherwise and whether categorized as a true lease or a financing lease for tax purposes);
- (i) all obligations of such person in respect of the deferred purchase or acquisition price of property or services (including, without limitation, obligations secured by any Purchase Money Security Interests) in excess of 90 days; and

- (j) any guarantee or indemnity (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business) in any manner of any part or all of an obligation included in items (a) through (i) above.

For greater certainty, in respect of the Income Trust on a consolidated basis, Debt shall include (i) all Permitted Indebtedness (including the net present value of operating leases in accordance with GAAP, and the 5-year deferred purchase consideration in respect of the "Hazco Acquisition" (as such term was defined in the Prior CCS Credit Agreement)), but shall exclude (ii) Subordinated Convertible Debenture Debt, (iii) trade payables and accrued liabilities that are current liabilities incurred in the ordinary course of business, (iv) current and future taxes, (v) current and long-term asset retirement obligations, and (vi) Indebtedness under Swaps.

**"Decision Date"** has the meaning ascribed thereto in Section 3.5(a).

**"Default"** means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

**"Defaulting Lender"** has the meaning ascribed thereto in Section 10.3(b).

**"Distribution"** means:

- (a) any declaration or payment of any dividend, royalty or fee directly or indirectly to any holder of Shares (other than, in the case of CCS, the Exchangeable Shares) of any person;
- (b) any redemption, retraction, repurchase or other acquisition or retirement, in whole or in part, of any Shares (other than, in the case of CCS, the Exchangeable Shares) of any person;
- (c) any payment by a person of any amount of principal, interest or other amounts in respect of any Debt which is owed to any Affiliate of any person;
- (d) any loan or advance which is made by a person to or in favour of a holder of Shares in such person or an Affiliate of such holder; or
- (e) the transfer by a person of any of its property or assets for consideration of less than fair market value thereof, to any of its Affiliates,

whether any of the foregoing is made, paid or satisfied in or for cash, property or both.

**"Drawdown Date"** means the date, which shall be a Business Day, of any Advance other than a Rollover or Conversion.

**"Drawdown Notice"** means a notice requesting an Advance other than by way of a Conversion or Rollover, substantially in the form of Schedule "C" attached hereto.

**"EBITDA"** means, with respect to any person for any period, the consolidated net income of such person for such period determined in accordance with GAAP before deduction of interest, taxes, non-cash items, depreciation, amortization, and expensed asset retirement obligations. For greater certainty, EBITDA shall be calculated without reduction for any Distributions made during such period; provided that if any person (or the assets of any person) is acquired by a Borrower or a Material Entity at any time during the relevant period of calculation such that it becomes a new Material Entity (or the assets of a Borrower or a Material Entity), such acquisition shall be deemed to have been made on the first day of such calculation period.

**"Early Repayment Date"** means the date (other than the Facility B Maturity Date) on which any Outstanding Principal under Facility B is to be prepaid or accelerated.

**"Effective Bond Yield"** means the bid side yield of the Reference Bond established three Business Days prior to any prepayment or acceleration under Facility B, plus 50 bps.

**"Effective Date"** means the day on which the conditions precedent set forth in Section 6.1 have been satisfied or waived.

**"Eligible Swaps"** means those Swaps which are entered into by a Borrower or a Material Entity and any Swap Lender, as applicable.

**"Eligible Swap Indebtedness"** means Indebtedness of a Borrower or a Material Entity to a Swap Lender under an Eligible Swap.

**"Enforcement Notice"** has the meaning ascribed thereto in Section 9.4.

**"Environmental Law"** means all Applicable Law which pertains to public health or safety, the protection or enhancement of the environment or pursuant to which Environmental Liabilities would arise or have arisen, including relating to a Release or threatened Release of any Hazardous Material or the generation, use, storage or transportation of any Hazardous Material, and including any condition, restriction, prohibition or requirement contained in any Applicable Law.

**"Environmental Liabilities"** means any and all liabilities and obligations for any Release, any environmental damage to, any contamination of, or any other environmental problem with, any person, property or the environment as a result of any Release, whether or not caused by a breach of Environmental Law, including all liabilities and obligations arising from or related to any surface, underground, air, groundwater or surface water contamination; the abandonment or plugging of any well; restorations and reclamations; the removal of or failure to remove any foundations, structures or equipment; the cleaning up or reclamation of storage sites; any Release; the violation of pollution standards; and personal injury (including sickness, disease or death) and property damage arising from any of the foregoing.

**"Equivalent Amount"** in one currency (the **"First Currency"**) of an amount in another currency (the **"Other Currency"**) means, as of the date of determination, the amount of the First Currency which would be required to purchase such amount of the Other Currency at the Bank of Canada noon (Toronto time) mid-point spot rate for such currencies on such date of determination (as quoted or published from time to time by the Bank of Canada) or, if such date of determination is not a Business Day, on the Business Day immediately preceding such date of determination, or at such other rate as may have been agreed to by the Borrowers and the Swingline Lender or the Agent, as the case may be.

**"Event of Default"** means any of the events or circumstances specified in Section 9.1.

**"Exchangeable Shares"** means: (i) prior to the Amalgamation becoming effective, the class of "series A exchangeable shares" in the capital of CCS having attached the rights, privileges, restrictions and conditions more particularly described in the articles of amalgamation of CCS filed with the Alberta Registrar of Corporations on May 22, 2002; and (ii) from and after the Amalgamation becoming effective, the class of "series A exchangeable shares" in the capital of CCS having attached the rights, privileges, restrictions and conditions more particularly described in the articles of amalgamation of CCS to be filed with the Alberta Registrar of Corporations to effect the Amalgamation; in each case, as supplemented and amended from time to time.

**"ExchangeCo"** means any Alberta corporation (including 1206525) formed from time to time as a wholly-owned Subsidiary of the Income Trust, for the purpose of acquiring Exchangeable Shares in exchange for Income Trust Units.

**"Existing Letters of Credit"** means all Letters of Credit issued by a Lender at the request of CCS pursuant to the Prior CCS Credit Agreement, and which remain outstanding on the Effective Date.

**"Existing Swaps"** means all Eligible Swaps entered into by any Borrower or Material Entity with a Swap Lender prior to the date hereof, and which remain outstanding on the Effective Date.

**"Face Amount"** means (i) in respect of a Bankers' Acceptance, the amount payable to the holder thereof on its maturity, and (ii) in respect of a Notional Bankers' Acceptance, the amount payable to the Non BA Lender on the maturity thereof.

**"Facility A"** means the extendible revolving operating loan facility more particularly described in Section 2.3.

**"Facility A Commitment"** means the Commitment of the Applicable Lenders in respect of Facility A as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time.

**"Facility A Lenders"** means the Applicable Lenders having a Commitment in respect of Facility A as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time.

**"Facility A Maturity Date"** means the earliest to occur of (i) that date which is the third anniversary of the Effective Date, unless extended pursuant to Section 3.5, and on which the Outstanding Principal and accrued interest under Facility A is due without the giving of an Acceleration Notice, or (ii) that due date of all Indebtedness under Facility A resulting from the giving of an Acceleration Notice.

**"Facility B"** means the non-revolving non-reducing fixed rate term loan facility established for CCS under the Prior CCS Credit Agreement and continued hereunder, as more particularly described in Section 2.4.

**"Facility B Commitment"** means the original commitment of the Applicable Lenders in respect of Facility B under the Prior CCS Credit Agreement and continued hereunder, as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time.

**"Facility B Lenders"** means the Applicable Lenders who had the original commitment in respect of Facility B under the Prior CCS Credit Agreement as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time.

**"Facility B Maturity Date"** means the earliest to occur of (i) December 10, 2011, on which date the Outstanding Principal and accrued interest under Facility B is due without the giving of an Acceleration Notice, or (ii) that due date of all Indebtedness under Facility B resulting from the giving of an Acceleration Notice.

**"Facilities"** means, collectively, the Swingline Facility, Facility A and Facility B, and **"Facility"** means any one of such Facilities.

**"Federal Funds Rate"** means, for any day, the rate of interest per annum for that day set forth in the weekly statistical release designated as H.15(519) or any successor publication published by the

Board of Governors of the Federal Reserve System of the United States of America, including any successor publication ("**H.15(519)**"), opposite the caption "Federal Funds (Effective)" and, if on any day such rate is not yet published in H.15(519), the rate for such day shall be the rate of interest per annum set forth in the daily statistical release designated as the Composite 3:30 p.m. Quotations for US Government Securities for such day under the caption "Federal Funds Effective Rate"; provided that if such rate is not yet published in either H.15(519) or the Composite 3:30 p.m. Quotations for US Government Securities, such rate shall be the average of the quotations for such day on overnight Federal funds (such words to have the meaning generally given to them by money market brokers of recognized standing doing business in the United States of America) transactions received by the Agent from three Federal funds brokers of recognized standing selected by the Agent.

**"Financial Covenants"** means the covenants set out in Section 8.2.

**"Financial Statements"** means the consolidated financial statements of the Income Trust as at a specified date and for the period then ended, including a balance sheet, statement of income and retained earnings, statement of cash flows and application of funds, together with comparative figures in each case (where a comparative period on an earlier statement exists), all prepared, maintained and stated in accordance with GAAP applied consistently, except as may be set forth in the notes thereto.

**"Fiscal Quarter"** means, in respect of the Income Trust, the three month period commencing on the first day of each Fiscal Year and each successive three month period thereafter during such Fiscal Year.

**"Fiscal Year"** means, in respect of the Income Trust, its fiscal year commencing on January 1 of each year and ending on December 31 of such year, or such other fiscal year as may be agreed to by the Agent acting on the instructions of the Majority Lenders.

**"Fixed Charge Coverage Ratio"** means, in respect of the Income Trust on a consolidated basis, for the current and previous three Fiscal Quarters, the ratio of (i) EBITDA minus (A) Unfinanced Capital Expenditures, and (B) cash taxes, to (ii) the aggregate of all scheduled principal payments (including under Capital Leases) plus interest, dividends and all Distributions paid by the Income Trust for such period.

**"Fortis"** means Fortis Capital (Canada) Ltd.

**"Funded Debt"** means, with respect to any person but without duplication, all Debt of such person which is payable more than one year from the date of creation thereof, including (a) Debt which is payable within one year but which by its terms may be renewable or extendible at the request of the obligor in respect thereof to a date beyond one year from the date of creation thereof, and (b) current maturities of any such Debt, but excluding (c) performance Letters of Credit to a cumulative maximum of \$5,000,000 that have a remaining term of one year or less, and (d) Surety Bonds (other than those included within subsection (c)) to a cumulative maximum of \$35,000,000. For greater certainty, obligations (whether contingent or not) under guarantees of Funded Debt shall be considered to be Funded Debt. In the case of the Borrowers, Funded Debt shall include, without duplication, (i) Advances made under the Swingline Facility and Facility A, (ii) Long-Term Debt, (iii) the current portion of Long-Term Debt, (iv) purchase obligations or Capital Leases, including residual amounts of purchase options and guarantees, but shall exclude (v) future or deferred income taxes and (vi) any asset retirement obligation costs.

**"Funded Debt to Capitalization Ratio"** means, at any time in respect of the Income Trust on a consolidated basis, the ratio of (i) the aggregate of Funded Debt at the end of the most recently completed Fiscal Quarter, to (ii) Capitalization.

**"Funded Debt to EBITDA Ratio"** means, at any time in respect of the Income Trust on a consolidated basis, the ratio of (i) the aggregate of Funded Debt at the end of the most recently completed Fiscal Quarter, to (ii) the aggregate EBITDA for the four most recently completed Fiscal Quarters.

**"GAAP"** means generally accepted accounting principles consistently applied which are in effect from time to time in Canada, as published in the Handbook of the Canadian Institute of Chartered Accountants.

**"General Partner"** means OpCo, acting in its capacity as the general partner of the Partnership, and any successor thereto acting in such capacity.

**"Governmental Authority"** means:

- (a) any government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction in the relevant circumstances,
- (b) any person acting within and under the authority of any of the foregoing or under a statute, rule or regulation thereof, and
- (c) any judicial, administrative or arbitral court, authority, tribunal or commission having jurisdiction in the relevant circumstances.

**"guarantee"** means any undertaking to assume, guarantee, indemnify, endorse (other than the routine endorsement of cheques in the ordinary course of business), contingently agree to purchase or to provide funds for the payment of, or otherwise become liable in respect of, any Indebtedness of any person; provided that the amount of each guarantee shall be deemed to be the amount of the Indebtedness guaranteed thereby unless the guarantee is limited to a specified amount as to realization exclusively on specified assets in which case the amount of such guarantee shall be deemed to be the lesser of such specified amount or the fair market value of such specified assets, as the case may be, or the amount of such Indebtedness.

**"Hardisty LP"** means Hardisty Caverns Limited Partnership, a limited partnership formed under the laws of Alberta, of which CCS is a limited partner.

**"Hardisty Project"** means the development, construction and operation by Hardisty LP of facilities at or near Hardisty, Alberta for crude oil storage and related services.

**"Hazardous Material"** means any substance or mixture of substances, or any pollutant or contaminant, toxic or dangerous waste, or hazardous material, as defined in or regulated by any Environmental Law, from time to time, that if Released to the environment could reasonably be expected to cause, immediately or at some future time, harm or damage to or impairment of the environment, or any risk to human health or safety or property.

**"HAZCO"** means HAZCO Environmental Services Ltd. as it existed prior to the Amalgamation becoming effective.

**"Income Trust"** means CCS Income Trust, an unincorporated trust settled under the laws of the Province of Alberta, having its chief executive office in Calgary, Alberta.

**"Income Trust Indenture"** means the amended and restated trust indenture dated as of September 8, 2005 relating to the Income Trust, made between CCS, as settlor, and Computershare, in its capacity

as trustee of the Income Trust, as further supplemented, amended, restated or replaced from time to time.

**"Income Trust Unit"** means a unit of the Income Trust.

**"Indebtedness"** means, with respect to any person but without duplication, all present and future indebtedness, liabilities and obligations created, incurred, assumed or guaranteed by such person, whether absolute or contingent including all Indebtedness for borrowed money, any obligation arising in respect of any Swap or similar obligation and all other liabilities which in accordance with GAAP would appear on the liability side of a balance sheet of such person prepared as at such time, except items of capital, retained earnings, surplus or deferred tax reserves. Unless otherwise indicated, **"Indebtedness"** means all Indebtedness of the Borrowers under this Agreement or any other Credit Documents, including without limitation, in respect of the Facilities and the Ancillary Facilities, and all fees, expenses and indemnity obligations hereunder and thereunder.

**"Interest Expense"** means, with respect to any person for any period, without duplication, interest expense of such person calculated on a consolidated basis and in accordance with GAAP as the same would be set forth or reflected in a consolidated statement of earnings of such person and, in any event and without limitation, shall include:

- (a) all interest accrued or payable in respect of such period;
- (b) all fees (including standby, letter of credit, guarantee, commitment and BA Fees) accrued or payable in respect of such period and which relate to any Debt, prorated (as required) over such period;
- (c) any difference between the face amount and the discount proceeds of any bankers' acceptances and other obligations issued at a discount, prorated (as required) over such period;
- (d) the interest component of capital lease obligations and any other financing lease obligations (whether a synthetic lease or otherwise and whether categorized as a true lease or a financing lease for income tax purposes); and
- (e) all net amounts charged or credited to interest expense under any Interest Swap in respect of such period.

**"Interest Payment Date"** means, with respect to Prime Rate Advances and US Base Rate Advances made under the Swingline Facility or under Facility A, and the single Advance previously made under Facility B, the third Business Day following the last day of each calendar month, and in each other case, such other date or dates as the Borrowers and the Agent may agree in writing.

**"Interest Swap"** means any transaction, arrangement or agreement entered into between a Borrower or a Material Entity and a counterparty, on a case by case basis, including a futures contract, an interest rate swap, an interest rate option, a cap transaction, a floor transaction, a collar transaction or other similar interest-related transaction, the purpose of which is to manage, mitigate or eliminate its exposure to fluctuations in interest rates.

**"ISDA Master Agreement"** means the 1992 International Swaps and Derivatives Association, Inc. Master Agreement (Multi Currency-Cross-Border) as from time to time amended, restated or replaced by the International Swaps and Derivatives Association, Inc., including the schedule thereto and any confirmation thereunder as entered into by any Borrower or Material Entity with any counterparty.

"**LC Rate**" means, from time to time in respect of a Letter of Credit Advance, the applicable percentage rate per annum for the applicable Funded Debt to EBITDA Ratio indicated beside the reference to "LC Rate" in the table to the definition of "Applicable Margin".

"**Lenders**" means, collectively, TD, BMO, CIBC, NBC, ATB, CWB, SLA, MF and Fortis, and any other banks and financial institutions who from time to time become party to this Agreement as a Lender hereunder and have a Commitment in respect of the Facilities as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time, and each of their respective successors and assigns, and "**Lender**" means any one of them as the context requires.

"**Lenders' Counsel**" means the firm of Fraser Milner Casgrain LLP, and/or such other firm or legal counsel as the Agent may from time to time designate.

"**Letter of Credit**" means a documentary letter of credit, standby letter of credit or letter of guarantee (in a form acceptable to the Lender issuing such letter of credit or letter of guarantee) in Canadian Dollars or US Dollars.

"**Letter of Credit Advance**" means: (i) in the case of the Swingline Facility, an Advance made by the Swingline Lender pursuant to this Agreement by the issuance of a Letter of Credit at the request and for the account of a Borrower; and (ii) in the case of Facility A, an Advance under Facility A made by the Applicable Lenders pursuant to this Agreement by the issuance of a Letter of Credit at the request and for the account of a Borrower.

"**LIBOR Advance**" means an Advance in US Dollars bearing interest at the LIBOR Rate.

"**LIBOR Period**" means the period selected by a Borrower for a LIBOR Advance which shall be 30, 60, 90 or 180 days commencing on the Drawdown Date, the Rollover Date or the Conversion Date of such Advance, as applicable, provided that:

- (a) in the case of a Rollover, the last day of each LIBOR Period shall also be the first day of the next LIBOR Period;
- (b) the last day of each LIBOR Period shall be a Business Day and, if not, such Borrower shall be deemed to have selected a LIBOR Period the last day of which is the first Business Day following the last day of the LIBOR Period selected by such Borrower; and
- (c) the last day of each LIBOR Period shall be on or prior to the Facility A Maturity Date or the Swingline Maturity Date, as applicable.

"**LIBOR Rate**" means, for any LIBOR Period and LIBOR Advance:

- (a) the simple average of the interest rates (rounded up to the nearest 1/16%) expressed as a percentage per annum (on the basis of a 360 day year) as quoted on the Telerate Page 3750, at which deposits in US Dollars are offered for deposit in the London interbank market at 11:00 a.m. (London time) three (3) Business Days before the first day of the LIBOR Period, for a period equal to the LIBOR Period and in an amount approximately equal to the LIBOR Advance; or
- (b) if such rates are not available at or about such time, the rate of interest (rounded up to the nearest 1/16%) expressed as a percentage per annum (on the basis of a 360 day year) at which the Agent, in accordance with its normal practice, would be prepared to quote and offer leading banks in the London interbank market deposits in US Dollars at 11:00 a.m. (London time) three (3) Business Days before the first day of the LIBOR Period, for a period

equal to the LIBOR Period and in an amount approximately equal to the amount of the LIBOR Advance.

**"Long-Term Debt"** means, at any particular time and in respect of the Income Trust on a consolidated basis, Indebtedness which does not mature within one year.

**"Majority Lenders"** means:

- (a) when there are less than three Lenders, all of the Lenders; and
- (b) when there are three or more Lenders, those Lenders holding, in the aggregate, a minimum of two-thirds (66⅔%) of the Total Commitment.

**"Make-Whole Amount"** means, in respect of Facility B, an amount determined as of any Early Repayment Date in respect of any prepayment or acceleration of Outstanding Principal under Facility B equal to the excess, if any, of (i) the present value of all Outstanding Principal and remaining interest payments under Facility B determined by discounting such payments assuming semi-annual compounding at the Effective Bond Yield, over (ii) the amount of the unpaid Outstanding Principal under Facility B; provided that the Make-Whole Amount may in no event be less than zero.

**"Material Adverse Effect"** means any matter, event or circumstance that individually or in the aggregate could have a material adverse effect on:

- (a) the business, financial condition, operations, property, assets or undertaking of the Borrowers and the Material Entities (taken as a whole);
- (b) the ability of any Borrower or Material Entity to perform its obligations under any material contract, if it would also have a material adverse effect on the ability of the Borrowers and the Material Entities (taken as a whole) to pay and perform their Obligations in accordance with this Agreement;
- (c) the ability of the Borrowers (taken as a whole) to pay and perform their Obligations in accordance with this Agreement;
- (d) the validity or enforceability of this Agreement or any other Credit Document;
- (e) the rights and remedies of the Lenders and the Agent under the Credit Documents; or
- (f) the priority ranking of any of the Security Interests granted by the Security or the rights or remedies intended or purported to be granted to the Agent and the Lenders under or pursuant to the Security.

**"Material Entity"** means, at any time, (i) the Income Trust, or (ii) any direct or indirect wholly-owned trust, partnership or corporate Subsidiary of the Income Trust (other than a Borrower) whose total assets constitute more than five percent (5%) of the consolidated total assets of the Income Trust, or whose total revenue (calculated on its preceding consecutive twelve month period) constitutes more than five percent (5%) of the consolidated revenue of the Income Trust for the then preceding consecutive twelve month period, or who has otherwise provided a Subsidiary Guarantee and Security to the Agent, and **"Material Entities"** means two or more of any such entities as the context requires.

**"Maturity Date"** means the Swingline Maturity Date, the Facility A Maturity Date or the Facility B Maturity Date, as the context requires.

"**MF**" means The Manufacturers Life Insurance Company, a body corporate formed under the laws of Canada.

"**NBC**" means National Bank of Canada.

"**Net Tangible Fixed Assets**" means, in respect of the Income Trust at the end of a Fiscal Quarter on a consolidated basis, all tangible property, plant, equipment and other property or assets that would, in accordance with GAAP, be determined to be fixed or capital property or assets, net of depreciation, amortization and goodwill.

"**New Maturity Date**" has the meaning ascribed thereto in Section 3.5(a).

"**Non-Agreeing Lender**" has the meaning ascribed thereto in Section 3.5.

"**Non BA Lender**" means a Lender which is not permitted by Applicable Law or by customary market practices to stamp, for purposes of subsequent sale, or to accept, a Bankers' Acceptance.

"**Non-Conflicted Lender**" has the meaning ascribed thereto in Section 3.9(b).

"**Note Indenture**" means, as the context requires, (i) the note indenture dated as of May 22, 2002 (the "**2002 Note Indenture**") made between CCS and Computershare, in its capacity as the trustee of the Income Trust, providing for issuance of the Notes thereunder, and (ii) any other note indenture entered into for the issuance of notes by CCS which provides for a subordination on terms substantially similar to the 2002 Note Indenture; in each case, as amended, supplemented, restated or replaced from time to time.

"**Notes**" means the unsecured, 13% exchangeable notes issued by CCS pursuant to the 2002 Note Indenture, any other notes issued or to be issued under any other Note Indenture, and any other notes issued by CCS to Computershare, in its capacity as the trustee of the Income Trust.

"**Notification Date**" has the meaning ascribed thereto in Section 3.5(a).

"**Notional Bankers' Acceptance**" has the meaning ascribed thereto in Section 2.14(b).

"**Obligations**" means, at any time, all of the present and future Indebtedness, direct or indirect, absolute or contingent, matured or unmatured of the Borrowers and the Material Entities owing to any of the Agent, the Lenders and the Swap Lenders under, pursuant to or in connection with (i) this Agreement and the other Credit Documents, and (ii) Eligible Swaps; including without limitation, all principal, interest, Make-Whole Amounts, fees, indemnities, costs and expenses owing by the Borrowers thereunder.

"**Offer of Extension**" means a written offer by the Agent, on behalf of the Agreeing Lenders, to the Borrowers to extend the Swingline Maturity Date and the Facility A Maturity Date to a date up to three years subsequent thereto, and setting forth the terms and conditions on which such extension is being offered by the Agreeing Lenders.

"**1076713**" means 1076713 Alberta Ltd. as it existed prior to the Amalgamation becoming effective.

"**1206525**" means 1206525 Alberta Ltd., an Alberta corporation.

"**OpCo**" means CCS Operations GP Inc., an Alberta corporation, and on the date hereof, the General Partner of the Partnership.

**"Outstanding Principal"** means, at any time in relation to any Facility, the aggregate at such time of: (a) the Equivalent Amount in Cdn Dollars of the principal amounts outstanding of all Prime Rate Advances, US Base Rate Advances and LIBOR Advances; (b) the Equivalent Amount in Cdn Dollars of the maximum undrawn amounts in respect of outstanding Letters of Credit; and (c) the Face Amount of all outstanding BA Advances.

**"Overdraft"** means an amount owing by a Borrower to the Swingline Lender from time to time as a result of the clearance of cheques or drafts drawn on, or transfer of funds from, accounts of that Borrower maintained with the Swingline Lender at its branch of account in Cdn Dollars or US Dollars for such purpose, including without limitation, as a result of demand and payment in respect of any Letter of Credit.

**"Partnership"** means CCS Operations Limited Partnership, a limited partnership formed under the laws of the Province of Alberta, having its chief executive office in Calgary, Alberta.

**"Partnership Agreement"** means the limited partnership agreement dated as of June 28, 2005 made between OpCo and the Subtrust relating to the Partnership, as amended, supplemented, restated or replaced from time to time.

**"Permitted Disposition"** means, in respect of the Borrowers and the Material Entities and subject to the restrictions in Section 8.9:

- (a) the sale or other disposition of any real or personal property, provided that the fair market value in any Fiscal Year of any such sales or dispositions, in the aggregate, does not exceed ten percent (10%) of Net Tangible Fixed Assets;
- (b) any sale, trade or other disposition of any tools, implements, equipment or machinery (other than Service Rigs) which may have become worn out, unserviceable, obsolete, unsuitable or unnecessary in operations;
- (c) any sale, transfer or other disposition of any Exchangeable Shares from time to time by the Income Trust or ExchangeCo;
- (d) abandonments, surrenders or terminations of properties, rights or interests in accordance with sound industry practice;
- (e) the sale or other disposition of any properties, rights or interests by one Borrower to the other Borrower, or by a Borrower to a Material Entity, or by a Material Entity to a Borrower, or by a Material Entity to another Material Entity; or
- (f) any other sale or disposition to which the Majority Lenders agree in writing.

**"Permitted Encumbrances"** means, as at any particular time, any of the following encumbrances on the property or any portion of the property of any Borrower or Material Entity:

- (a) reservations, limitations, provisos and conditions expressed in any original grant from the Crown;
- (b) liens for Taxes and any other statutory Security Interests which (i) are not due or delinquent, or (ii) relate to claims the validity of which is being contested at the time in good faith by appropriate proceedings for amounts in the aggregate not in excess of \$5,000,000;

- (c) undetermined or inchoate Security Interests incidental to operations arising in the ordinary course of business which relate to obligations (i) not due or delinquent and which have not at such time been filed pursuant to law and no other statutory proceedings have been taken to enforce the same, or (ii) being contested at the time in good faith by appropriate proceedings for amounts in the aggregate not in excess of \$5,000,000;
- (d) Security Interests incurred or created in the ordinary course of business as security in favour of any other person which is conducting development or operation of the property to which such Security Interests relate for the obligations of such Borrower or Material Entity in respect of the costs and expenses of such development or operation, which relate to such obligations not due or delinquent or to such obligations being contested at the time in good faith for amounts which at the time are not in excess of \$5,000,000;
- (e) the lien of any judgment rendered, or claim filed, against any Borrower or Material Entity which is being contested in good faith by appropriate proceedings if during such contestation there is no risk of forfeiture of any material property either because of (i) a stay of enforcement of such judgment or claim (if enforceable by seizure, sale or other remedy against any property), as the case may be, is in effect, or (ii) the value of the assets affected thereby is less than \$5,000,000;
- (f) easements, rights-of-way, servitudes or other similar rights in and (including without limitation, rights-of-way and servitudes for railways, sewers, drains, pipe lines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other persons and other minor defects, encumbrances and restrictions which either alone or in the aggregate do not materially detract from the value of such land or materially impair its use;
- (g) security given to any public utility or any Governmental Authority when required by such public utility or Governmental Authority in the ordinary course of business, provided such security does not either alone or in the aggregate materially detract from the value of the property affected thereby or materially impair its use;
- (h) the right reserved to or vested in any Governmental Authority by the terms of any lease by any statutory provision to terminate any lease or to require payment of royalties as a condition of the continuance thereof;
- (i) Security Interests in favour of the Agent and the Lenders pursuant to any of the Credit Documents;
- (j) Purchase Money Security Interests, provided that the aggregate amount secured thereby does not in the aggregate exceed \$10,000,000;
- (k) Security Interests securing Surety Bonds incurred in the ordinary course of business, provided that the aggregate amount secured thereby does not in the aggregate exceed \$35,000,000;
- (l) Security Interests granted to a Swap counterparty (other than to a Swap Lender) which rank in all respects subordinate to the Security;
- (m) Security Interests securing any Permitted Indebtedness;
- (n) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Security Interest referred to in the preceding paragraphs (a) to

(m) inclusive in this definition, so long as any such extension, renewal or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed or replaced (plus any improvements on such property) and the principal amount of the indebtedness or obligation secured thereby is not increased, without the consent of the Lenders; or

- (o) all such other claims and encumbrances as are specifically disclosed by notice in writing to the Agent to the extent that the Agent, acting on instructions from the Majority Lenders, by specific notice in writing to the Borrowers, advises that the Agent agrees to accept such claims and encumbrances as Permitted Encumbrances for the purposes of this Agreement.

**"Permitted Indebtedness"** means, without duplication:

- (a) trade payables of any Borrower or Material Entity (other than Indebtedness for borrowed money) incurred in the ordinary course of business, provided that such Indebtedness is classified as a current liability on the Financial Statements;
- (b) all Indebtedness of the Borrowers to the Agent and the Lenders under this Agreement or under or secured by any other Credit Document;
- (c) all Indebtedness of one Borrower to the other Borrower, or of a Borrower to a Material Entity (other than the Income Trust), or of a Material Entity to a Borrower, or of a Material Entity to another Material Entity (other than the Income Trust);
- (d) all Indebtedness of any Material Entity (other than the Income Trust) or Borrower to the Income Trust, provided that such Indebtedness has first been subordinated to all Indebtedness under the Credit Documents pursuant to the Subordination Agreement or otherwise on terms and conditions satisfactory to the Majority Lenders;
- (e) all Indebtedness of the Borrowers and the Material Entities of whatsoever nature and kind, other than as stated in subparagraphs (a), (b), (c) and (d) of this definition, provided that such Indebtedness shall not at any time, in aggregate, exceed fifteen percent (15%) of Net Tangible Fixed Assets; and
- (f) such other Indebtedness of the Borrowers or the Material Entities which the Agent, acting on instructions of the Majority Lenders, has consented to in writing.

**"Permitted Swap"** means a Swap entered into by a Borrower or a Material Entity with a counterparty (other than a Swap Lender) which, at the time the Swap is entered into: (i) is unsecured, or (ii) is secured but otherwise complies with the restrictions in subparagraph (o) in the definition of "Permitted Encumbrances".

**"Permitted Title Defects"** means, in respect of any particular property of any Borrower or Material Entity, the following defects in title to such property:

- (a) Permitted Encumbrances;
- (b) title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use of the property for the purposes for which it is held, or materially impair its saleability, or cause a material disruption or reduction in the production or cash flow (if any) associated therewith; and

- (c) title defects which are disclosed to and expressly consented to in writing by the Agent acting on the instructions of the Majority Lenders as constituting Permitted Title Defects hereunder.

**"person"** means any individual, corporation, company, partnership, unincorporated association, trust, joint venture, estate or other judicial entity or any governmental body.

**"Prime Rate"** means, on any day with respect to Prime Rate Advances, the greater of:

- (a) the floating annual rate of interest announced from time to time by the Swingline Lender (for Advances under the Swingline Facility) or the Agent (for Advances under Facility A) as being its reference rate then in effect for determining interest rates on Canadian Dollar denominated commercial loans made by it in Canada; and
- (b) a rate of interest per 365 day period equal to the CDOR Rate for one-month Canadian Dollar bankers' acceptances plus 100 bps.

**"Prime Rate Advance"** means the portion of an Advance made available by an Applicable Lender to a Borrower pursuant to Section 2.6 and outstanding from time to time, which is denominated in Canadian Dollars (including all amounts advanced by the Swingline Lender by way of Overdraft) and on which such Borrower has agreed to pay interest in accordance with Section 4.1.

**"Property"** means, with respect to any person, all or any portion of its undertaking, property and assets for the time being, both real and personal, tangible and intangible.

**"Proportionate Share"** means in respect of each Lender from time to time:

- (a) with respect to the Facilities, (i) prior to the giving of an Acceleration Notice under Section 9.2, the percentage of the Total Commitment which a Lender has agreed to advance to the Borrowers determined by dividing the Lender's Commitment in respect of the Facilities by the aggregate of all of the Lenders' Commitments with respect to the Facilities, and (ii) after the giving of an Acceleration Notice under Section 9.2, the percentage determined by dividing the Obligations owed by the Borrowers to each Lender by the aggregate of all Obligations owed by the Borrowers to all of the Lenders;
- (b) with respect to an Advance or a payment only under Facility A and prior to the giving of an Acceleration Notice under Section 9.2,
- (i) at any time when all of the Lenders are Agreeing Lenders, the percentage of the Facility A Commitment which a Lender has agreed to advance to the Borrowers determined by dividing the Lender's Commitment in respect of Facility A by the aggregate of all of the Lenders' Commitments with respect to Facility A, or
- (ii) at any time when there are one or more Agreeing Lenders and one or more Non-Agreeing Lenders, then in respect of:
- (A) an Advance under Facility A, the percentage of Facility A which each Agreeing Lender has agreed to advance to the Borrowers, determined by dividing the Lender's Commitment of each Agreeing Lender in respect of Facility A by the aggregate of all of the Agreeing Lenders' Commitments with respect to Facility A,
- (B) a payment of interest under Facility A, the percentage thereof determined by dividing the Obligations owed by the Borrowers to each Lender with

respect to Facility A by the aggregate of all Obligations owed by the Borrowers to all of the Lenders with respect to Facility A,

- (C) a payment of principal made prior to the Facility A Maturity Date of any Lender, then if such payment is (x) not made as a permanent repayment and reduction of the Facility A Commitment, the share shall be for Agreeing Lenders only and for each Agreeing Lender shall be determined by dividing the Obligations owed by the Borrowers to each Agreeing Lender by the aggregate of all Obligations owed by the Borrowers to all of the Agreeing Lenders with respect to Facility A, or (y) made as a permanent repayment and reduction of the Facility A Commitment, the share for all Lenders shall be determined by dividing each Lender's Commitment with respect to Facility A by the aggregate of all of the Lenders' Commitments with respect to Facility A, provided that no Lender shall be required to be paid any amount greater than required to reduce its outstanding Advances under Facility A to its Facility A Commitment, as so reduced,
  - (D) a payment of fees (other than BA Fees payable only on a Rollover or Conversion) under Facility A, a percentage thereof for each Agreeing Lender determined by dividing the Lender's Commitment of each Agreeing Lender with respect to Facility A by the aggregate of all of the Agreeing Lenders' Commitments with respect to Facility A, and
  - (E) a payment of BA Fees upon a Rollover or Conversion (and not involving an Advance) under Facility A, the percentage for each Lender determined by dividing the Obligations owed by the Borrowers to each Lender with respect to Facility A by the aggregate of all Obligations owed by the Borrowers to all of the Lenders with respect to Facility A;
- (c) with respect to a cancellation of Facility A Commitments pursuant to Section 3.5 for each Non-Agreeing Lender to which the cancellation is applicable, the percentage determined by dividing such Lender's Commitment with respect to Facility A by the aggregate of all Lenders' Commitments with respect to Facility A;
  - (d) on the Facility A Maturity Date of any Lender, the percentage for that Lender determined by dividing the Obligations owed by the Borrowers to each Lender with respect to Facility A by the aggregate of all Obligations owed by the Borrowers to all of the Lenders with respect to Facility A having a concurrent Facility A Maturity Date;
  - (e) prior to the giving of an Acceleration Notice under Section 9.2, 100% for the Swingline Lender and 0% for all other Lenders with respect to an Advance by or a repayment to the Swingline Lender only under the Swingline Facility;
  - (f) prior to the giving of an Acceleration Notice under Section 9.2, with respect to any other Obligations owing by the Borrowers hereunder, the *pro rata* aggregate unpaid amount of such outstanding Obligations owed to each Lender under this Agreement; and
  - (g) after the giving of an Acceleration Notice under Section 9.2 and subject in respect of the Lenders to the provisions of Section 10.6 with respect to the Obligations owed by the Borrowers to all of the Lenders, the percentage of the Obligations of the Borrowers to the Lenders determined by dividing the amount of such Obligations owed by the Borrowers to each Lender by the aggregate of all of the then outstanding Obligations owed by the Borrowers to all of the Lenders (which for greater certainty shall include all Obligations

under Eligible Swap Agreements owed by a Borrower or Material Entity to any Swap Lenders and to persons who ceased to be Lenders hereunder after entering into such Eligible Swap Agreements).

**"Purchase Money Security Interest"** means a Security Interest created by any Borrower or Material Entity securing Debt incurred to finance the acquisition of assets, provided that (i) such Security Interest is created substantially simultaneously with the acquisition of such assets, (ii) such Security Interest does not at any time encumber any Property other than the Property financed by such Debt, (iii) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Debt secured by any such Security Interest at no time exceeds 100% of the original purchase price of such property at the time it was acquired; and in this definition, the term **"acquisition"**, for the purposes of this definition, shall include a Capital Lease, and the term **"acquire"** shall have a corresponding meaning.

**"Purchasing Lender"** has the meaning ascribed thereto in Section 3.5(e).

**"rateably"** means the proportion that the total Indebtedness of the Borrowers owing to each Lender bears to the aggregate of the Indebtedness of the Borrowers owing to all of the Lenders at such time.

**"Reference Bond"** means: (i) for the purposes of Section 4.5, the most actively traded issue of non-callable Government of Canada bonds with interest compounded semi-annually and having a seven (7) year term to maturity, or (ii) for the purposes of calculating the Make-Whole Amount as of any Early Repayment Date, the most actively traded issue of non-callable Government of Canada bonds with interest compounded semi-annually and having a term to maturity as close as possible to the remainder of the term to maturity of any Outstanding Principal under Facility B being prepaid or accelerated on an Early Repayment Date.

**"Release"** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any element or compound in or into the indoor or outdoor environment (including the abandonment or disposal of any barrels, tanks, containers or receptacles containing any contaminant), or in, into or out of any vessel or facility, including the movement of any contaminant through the air, soil, subsoil, surface, water, groundwater, rock formation or otherwise.

**"Relevant Jurisdiction"** means, from time to time, any province or territory in Canada or other relevant political subdivision of any other country in which any Borrower or Material Entity has material Property or in which it carries on material business. For the purposes of this Agreement as of the date hereof, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Northwest Territories, Yukon and Nunavut are the Relevant Jurisdictions in respect of the Borrowers and the Material Entities (taken as a whole).

**"Request for an Offer of Extension"** means a request by the Borrowers to the Agent for an offer by the Lenders to extend the Revolving Period in respect of the Swingline Facility and Facility A pursuant to Section 3.5(a), in the form attached hereto as Schedule "E".

**"Requested Lender"** has the meaning ascribed thereto in Section 3.5(a).

**"Responsible Officer"** means (i) in the case of the Income Trust, the chief executive officer, president, any executive vice-president, chief financial officer, any vice-president or the treasurer of the Administrator, acting in such capacity, (ii) in the case of the Partnership, the chief executive officer, president, any executive vice-president, chief financial officer, any vice-president or the treasurer of the General Partner, acting in such capacity, and (iii) in the case of CCS, the chief

executive officer, president, any executive vice-president, chief financial officer, any vice-president or the treasurer of CCS.

**"Revolving Period"** means: (i) in respect of the Swingline Facility, the period commencing on the Effective Date and ending at 2:30 p.m. (Calgary time) on the Swingline Maturity Date, or such later date to which the Swingline Maturity Date may be extended pursuant to Section 3.5; and (ii) in respect of Facility A, the period commencing on the Effective Date and ending at 2:30 p.m. (Calgary time) on the Facility A Maturity Date, or such later date to which the Facility A Maturity Date may be extended pursuant to Section 3.5.

**"Rollover"** means a rollover of a BA Advance into another BA Advance, or a rollover of a LIBOR Advance into another LIBOR Advance, or an extension of a Letter of Credit Advance, as permitted hereby, and **"Rolled Over"** has a corresponding meaning.

**"Rollover Date"** means a Business Day on which a Rollover is to be made pursuant to a Rollover Notice.

**"Rollover Notice"** means a notice to make a Rollover, substantially in the form of Schedule "C" attached hereto.

**"SLA"** means Sun Life Assurance Company of Canada, a body corporate formed under the laws of Canada.

**"Section"** means the designated section of this Agreement.

**"Security"** means the security documents listed in Section 5.1, any amendments thereto, any indentures supplemental to or in implementation of the security documents, and any and all other documents, instruments or agreements held from time to time by the Agent, securing or intended to secure payment and performance of the Obligations.

**"Security Interest"** means any assignment, mortgage, charge, pledge, lien, hypothec, encumbrance securing or in effect securing an obligation or any Indebtedness of any person, conditional sale, title retention agreement or security interest whatsoever, howsoever created or arising, whether absolute or contingent, fixed or floating, legal or equitable, perfected or not, and includes the rights of a lessor pursuant to a Capital Lease and any other interest in property or assets, howsoever created or arising, that secures payment or performance of an obligation, but does not include a right of set-off or a set-off.

**"Service Rigs"** means service rigs now or hereafter owned and operated by any Borrower or Material Entity, the capital cost of which on a per unit basis exceeds \$1,000,000.

**"Shares"** means share capital of any class of any corporation or other ownership interests in a partnership or other person including, without limitation, shares or interests which carry a residual right to participate in the earnings of such corporation, partnership or person or, upon the liquidation or winding up of such corporation, partnership or person, to share in its assets, and voting rights to elect the board of directors under any circumstances.

**"Subordinated Convertible Debenture Debt"** means any Debt under convertible subordinated debentures or notes issued by the Income Trust which have all of the following characteristics:

- (a) an initial final maturity or due date in respect of repayment of principal extending beyond the latest Maturity Date under this Agreement in effect at the time such debentures or notes are created, incurred, assumed or guaranteed;

- (b) no scheduled or mandatory payment or repurchase of principal thereunder (other than acceleration following an event of default in regard thereto or payment which can be satisfied by the delivery of Income Trust Units as contemplated in paragraph (f) of this definition and other than on a change of control of the Income Trust where a Change of Control also occurs by reason of the definition thereof in this Agreement) prior to the latest Maturity Date under this Agreement in effect at the time such debentures or notes are created, incurred, assumed or guaranteed;
- (c) upon and during the continuance of a Default, an Event of Default or acceleration of the time for repayment of any Obligations which has not been rescinded, (i) all amounts payable in respect of principal, premium (if any) or interest under such debentures or notes are subordinate and junior in right of payment to all such Obligations and (ii) no enforcement steps or enforcement proceedings may be commenced in respect of such debentures or notes;
- (d) upon distribution of the assets of the Income Trust on any dissolution, winding up, total liquidation or reorganization of the Income Trust (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of such person, or otherwise), all Obligations shall first be paid in full, or provisions made for such payment, before any payment is made on account of principal, premium (if any) or interest payable in regard to such debentures or notes; and
- (e) the occurrence of a Default or Event of Default hereunder or the acceleration of the time for repayment of any of the Obligations or enforcement of the rights and remedies of the Agent and the Lenders hereunder or under any other Credit Document shall not in and of themselves:
  - (i) cause a default or event of default (with the passage of time or otherwise) under such debentures or notes or the indenture governing the same; or
  - (ii) cause or permit the obligations under such debentures or notes to be due and payable prior to the stated maturity thereof; and
- (f) payments of interest or principal due and payable under such debentures or notes can be satisfied, at the option of the Income Trust, by delivering Income Trust Units in accordance with the indenture or agreement governing such debentures or notes (whether such units are received by the holders of such debentures or notes as payment or are sold by a trustee or representative under such indenture or agreement to provide cash for payment to holders of such debentures or notes).

**"Subordination Agreement"** means the subordination agreement dated as of January 3, 2006 entered into among the Borrowers, the Material Entities and the Agent, as amended, supplemented, restated or replaced from time to time.

**"Subsidiary"** means, as to any person, another person in which such person and/or one or more of its subsidiaries owns, directly or indirectly, sufficient voting securities to enable it or them (as a group) to ordinarily elect a majority of the directors (or persons performing similar functions) of such entity, and any general partnership or limited partnership if 50.1% interest in the profits or capital thereof (and in the case of a limited partnership, 50.1% in the shares of the capital of the managing general partner) is owned by such person and/or one or more of its subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such person or one or more of its subsidiaries).

"**Subsidiary Guarantee**" means a guarantee granted or to be granted by a Material Entity to the Agent pursuant to which it guarantees the payment and performance of the Obligations of the Borrowers to the Agent, the Lenders and the Swap Lenders, as the same may be amended, modified, supplemented, varied, restated or replaced from time to time.

"**Subtrust**" means CCS Holding Trust, an unincorporated trust settled under the laws of the Province of Alberta, of which the Income Trust is the sole beneficiary.

"**Subtrust Trust Indenture**" means the trust indenture dated as of June 28, 2005 relating to the Subtrust, made between the Income Trust, as settlor, and CCS, in its capacity as trustee of the Subtrust, as amended, supplemented, restated or replaced from time to time.

"**Subtrust Trust Unit**" means a unit of the Subtrust.

"**Successor Agent**" has the meaning ascribed thereto in Section 10.11.

"**Surety Bonds**" means performance bonds, bid bonds, performance letters of credit, performance letters of guarantee, labour and material bonds, and bonds in connection with remediation requirements and other obligations of like nature.

"**Swap**" means any Commodity Swap, Currency Swap or Interest Swap.

"**Swap Demand for Repayment**" means a demand made by a Swap Lender pursuant to an agreement evidencing an Eligible Swap demanding repayment of all Indebtedness relating thereto and includes, without limitation, any notice under any agreement evidencing an Eligible Swap which, when delivered, would require an early termination thereof and may require a payment by any Borrower or Material Entity in settlement of obligations thereunder as a result of such early termination.

"**Swap Lender**" means a person which, at the time that it entered into any Eligible Swap with a Borrower or a Material Entity, was a Lender or an Affiliate of a Lender.

"**Swingline Commitment**" means the Commitment of the Swingline Lender in respect of the Swingline Facility set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time.

"**Swingline Facility**" means the extendible revolving swingline loan facility more particularly described in Section 2.2.

"**Swingline Lender**" means TD in respect of Advances made by it to a Borrower under the Swingline Facility, or any other Facility A Lender which may replace or succeed TD in such capacity from time to time.

"**Swingline Maturity Date**" means the earliest to occur of (i) that date which is the third anniversary of the Effective Date, unless extended pursuant to Section 3.5, and on which the Outstanding Principal and accrued interest under the Swingline Facility is due without the giving of an Acceleration Notice, or (ii) that due date of all Indebtedness under the Swingline Facility resulting from the giving of an Acceleration Notice.

"**TD**" means The Toronto-Dominion Bank.

"**Takeover**" has the meaning ascribed thereto in Section 3.9.

"**Takeover Loan**" has the meaning ascribed thereto in Section 3.9(c).

"**Taxes**" means all taxes, levies, rates, assessments, charges, imposts, stamp taxes, duties, deductions, withholdings and similar impositions payable, levied, collected, withheld or assessed as of the date of this Agreement or at any time in the future under the laws of Canada or any political subdivision thereof, and "**Tax**" shall have a corresponding meaning.

"**Total Commitment**" means the aggregate of the Commitments of all of the Lenders under the Facilities, as hereafter cancelled, reduced, increased or terminated from time to time pursuant to this Agreement.

"**Trust Documents**" means:

- (a) the Income Trust Indenture;
- (b) the Subtrust Trust Indenture;
- (c) the Note Indenture; and
- (d) the Administration Agreement.

"**Unfinanced Capital Expenditures**" means, directly or indirectly, all capital expenditures of the Income Trust financed other than by (i) Advances under Facility A, (ii) Capital Lease obligations (permitted under subparagraph (l) of the definition of "Permitted Encumbrances"), (iii) Income Trust Unit issuances, or (iv) other Permitted Indebtedness.

"**US Base Rate**" means, on any day with respect to US Base Rate Advances, the greater of:

- (a) the annual rate of interest announced from time to time by the Swingline Lender (for Advances under the Swingline Facility) or the Agent (for Advances under Facility A) as being its reference rate then in effect for determining interest rates on US Dollar denominated commercial loans made by it in Canada; and
- (b) a rate of interest per 365 day period equal to the Federal Funds Rate plus 100 bps.

"**US Base Rate Advance**" means the portion of an Advance made available by the Swingline Lender (in the case of the Swingline Facility) or the Applicable Lenders (in the case of Facility A) to a Borrower pursuant to Section 2.6 and outstanding from time to time, which is denominated in US Dollars and on which such Borrower has agreed to pay interest in accordance with Section 4.2.

"**US Dollars**" and the symbol "**US\$**" each means lawful money of the United States of America.

"**WasteWorks**" means WasteWorks Inc. as it existed prior to the Amalgamation becoming effective.

## 1.2 Knowledge

Where any representation, warranty or other provision of this Agreement is qualified by reference to the knowledge of any Borrower or of the Income Trust, after reasonable inquiry, it shall be deemed to refer to the actual knowledge of the senior management of CCS after having made such inquiries of its Responsible Officers, and, if as a result of the actual knowledge of such Responsible Officers after having made such inquiries, there is an issue or matter known that would reasonably require advice from professional advisors, the professional advisors of CCS likely to have knowledge of the relevant subject matter.

### **1.3 Headings and Table of Contents**

The headings, the table of contents and the article and section titles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### **1.4 References**

Unless something in the subject matter or context is inconsistent therewith, all references to Sections, Articles and Schedules are to Sections, Articles of and Schedules to this Agreement.

### **1.5 Rules of Interpretation**

In this Agreement, unless otherwise specifically provided, the singular includes the plural and vice versa, and "in writing" or "written" includes printing, typewriting or any electronic means of communication capable of being visibly reproduced at the point of reception, including by facsimile.

### **1.6 Generally Accepted Accounting Principles**

All Financial Statements required to be furnished hereunder shall be prepared in accordance with GAAP. Each accounting term used in this Agreement, unless otherwise defined herein, has the meaning assigned to it under GAAP and, except as otherwise provided herein, reference to any balance sheet item, statement of income item or statement of cash flows item means such item as computed from the applicable financial statement prepared in accordance with GAAP.

### **1.7 Time**

Unless otherwise provided herein, all references to a time in this Agreement shall mean local time in Calgary, Alberta.

### **1.8 Monetary References**

Whenever an amount of money is referred to herein, such amount shall, unless otherwise expressly stated, be in Canadian Dollars.

### **1.9 Payment for Value**

All payments required to be made hereunder shall be made for value on the required day in same day immediately available funds.

### **1.10 Schedules**

Schedule "A"	-	Commitments of the Lenders
Schedule "B"	-	Compliance Certificate
Schedule "C"	-	Drawdown, Conversion or Rollover Notice
Schedule "D"	-	Repayment Notice
Schedule "E"	-	Request for an Offer of Extension
Schedule "F"	-	Assignment Agreement

**ARTICLE II  
CREDIT FACILITIES**

**2.1 Advances and Obligations Under the Prior CCS Credit Agreement**

- (a) **Effective Date:** Upon this Agreement becoming effective on the Effective Date, and relying on each of the representations and warranties set out in Article 7, and subject to the terms and conditions of this Agreement:
- (i) each Lender agrees to make Advances under the Swingline Facility and Facility A available to the Borrowers up to the maximum amount of its respective Commitment, for the purposes set forth in Sections 2.2 and 2.3, as the case may be, and the initial Advances under the Swingline Facility and Facility A shall be used by CCS, among other things, to repay all Indebtedness of CCS in respect of the similar facilities previously advanced to CCS under the Prior CCS Credit Agreement;
  - (ii) the single advance of Facility B previously made under the Prior CCS Credit Agreement shall be deemed to be outstanding as an Advance of Facility B under this Agreement, and for greater certainty, no Make-Whole Amount is payable as a result thereof;
  - (iii) upon completion of the actions referred to in subparagraphs (i) and (ii) above, the Prior CCS Credit Facilities shall thereafter be permanently cancelled and the Prior CCS Credit Agreement shall be terminated, and
  - (iv) the parties to the Prior CCS Credit Agreement shall have no further rights or obligations to each other thereunder (as such agreement existed immediately prior to the Effective Date), except to the extent continued hereunder.
- (b) **Existing Letters of Credit:** Concurrently with this Agreement becoming effective on the Effective Date, each Existing Letter of Credit which remains outstanding and was previously issued by a Lender at the request and for the account of CCS under the Prior CCS Credit Agreement shall be deemed to be outstanding as a Letter of Credit issued at the request of CCS by the respective Lender hereunder until such time as a replacement Letter of Credit is issued under this Agreement.
- (c) **Existing Swaps:** Concurrently with this Agreement becoming effective on the Effective Date, each Existing Swap which remains outstanding and was previously entered into by any Borrower or Material Entity with a Swap Lender shall be deemed to be continuing as an Eligible Swap between that Borrower or Material Entity and such Swap Lender under this Agreement.

**2.2 Swingline Facility**

Subject to the provisions of this Agreement, the Swingline Lender agrees to provide a revolving credit (the "**Swingline Facility**") under which the Borrowers or either of them may borrow, repay and reborrow an aggregate principal amount up to the Swingline Commitment. At the option of the Borrowers, the Swingline Facility may be used by requesting Prime Rate Advances, US Base Rate Advances, LIBOR Advances, BA Advances or Letter of Credit Advances (in Cdn\$ or US\$) from the Swingline Lender; provided that such Prime Rate Advances and US Base Rate Advances are also available by way of Overdraft without notice. The Swingline Facility shall only be used to refinance existing debt and for ongoing working capital and general corporate, partnership and trust purposes of the Borrowers and the Material Entities, including without limitation, to finance acquisitions and to pay the fees, costs and expenses relating to the preparation,

negotiation and settlement of this Agreement, the Security and the other Credit Documents. Each Advance under the Swingline Facility by way of Overdraft in Canadian Dollars shall automatically be deemed to be a Prime Rate Advance, and each Advance under the Swingline Facility by way of Overdraft in US Dollars shall automatically be deemed to be a US Base Rate Advance. Each Borrower covenants and agrees not to effect any Overdraft hereunder which would cause the Outstanding Principal under the Swingline Facility to exceed the Swingline Commitment at any time, and acknowledges that the Swingline Lender reserves the right to refuse to honour any Overdraft hereunder which, in the opinion of the Swingline Lender, would have the effect of causing the Swingline Commitment to be so exceeded. The Swingline Lender shall monitor the Swingline Facility for the purpose of identifying any excess Indebtedness thereunder beyond the Swingline Commitment and, upon the Swingline Lender becoming aware of any such excess Indebtedness under the Swingline Facility in any amount which exceeds the Swingline Commitment, the Swingline Lender shall forthwith provide notice to the Borrowers to repay the amount of any such excess, whereupon the Borrowers shall forthwith after receiving notice thereof repay the amount of any such excess.

### **2.3 Facility A**

Subject to the provisions of this Agreement, the Facility A Lenders agree to provide a revolving credit ("**Facility A**") under which the Borrowers or either of them may borrow, repay and reborrow an aggregate principal amount up to the Facility A Commitment; provided that the obligation of each Facility A Lender to make Advances under Facility A shall be several and shall not exceed its Proportionate Share of the Facility A Commitment. At the option of the Borrowers, Facility A may be used by requesting Prime Rate Advances, US Base Rate Advances, LIBOR Advances, BA Advances or Letter of Credit Advances (in Cdn\$ or US\$) from the Facility A Lenders. Facility A shall only be used to refinance existing debt and for ongoing working capital and general corporate, partnership and trust purposes of the Borrowers and the Material Entities, including without limitation, to finance acquisitions and to pay the fees, costs and expenses relating to the preparation, negotiation and settlement of this Agreement, the Security and the other Credit Documents.

### **2.4 Facility B**

The Facility B Lenders have previously provided a non-revolving non-reducing fixed rate term loan facility ("**Facility B**") under the Prior CCS Credit Agreement pursuant to which CCS borrowed by way of a single advance from such Facility B Lenders an aggregate principal amount in Cdn Dollars up to the Facility B Commitment. The Borrower hereby acknowledges and agrees that (i) the single advance made available to CCS under Facility B of the Prior CCS Credit Agreement was completed on or about December 10, 2004, (ii) no further Advances are available to the Borrower under Facility B of this Agreement, and (iii) concurrently with this Agreement becoming effective on the Effective Date, the single advance made available to CCS under Facility B of the Prior CCS Credit Agreement shall be deemed to be outstanding as an Advance to the Borrower under Facility B of this Agreement.

### **2.5 Revolvement –Swingline Facility and Facility A**

- (a) The principal amount of any Advance under the Swingline Facility that is repaid may be reborrowed from time to time, subject to the restrictions set out in Section 2.2, until the Swingline Maturity Date, following which all undrawn Commitments under the Swingline Facility will be cancelled and all Obligations under the Swingline Facility shall become immediately due and payable.
- (b) The principal amount of any Advance under Facility A that is repaid may be reborrowed from time to time, subject to the restrictions set out in Section 2.3, until the Facility A Maturity Date, following which all undrawn Commitments under Facility A will be cancelled and all Obligations under Facility A shall become immediately due and payable.

## **2.6 Prime Rate and US Base Rate Advances**

Subject to the other provisions of this Agreement, upon timely fulfillment of all applicable conditions as set forth in this Agreement, the Swingline Lender (in the case of the Swingline Facility) or the Applicable Lenders (in the case of Facility A) will make the amount of a Prime Rate Advance or a US Base Rate Advance requested by a Borrower available to such Borrower on the Drawdown Date requested by such Borrower by crediting such amount to the applicable Borrowers' Account or the applicable Agent's Account, as the case may be. Each Prime Rate Advance under Facility A shall be in a minimum amount of \$50,000 and in whole multiples of \$50,000 thereafter, and each US Base Rate Advance under Facility A shall be in a minimum amount of US\$50,000 and in whole multiples of US\$50,000 thereafter.

## **2.7 LIBOR Advances**

Subject to the other provisions of this Agreement, upon timely fulfillment of all applicable conditions as set forth in this Agreement, the Swingline Lender (in the case of the Swingline Facility) or the Applicable Lenders (in the case of Facility A) will make the amount of a LIBOR Advance requested by a Borrower available to such Borrower on the Drawdown Date requested by such Borrower by crediting such amount to the applicable Borrowers' Account or the applicable Agent's Account, as the case may be. Each LIBOR Advance under Facility A shall be in a minimum amount of US\$1,000,000 and in whole multiples of US\$100,000 thereafter.

## **2.8 Evidence of Indebtedness**

The Indebtedness of each Borrower resulting from Advances (including by way of Overdraft) made by the Swingline Lender under the Swingline Facility shall be evidenced by records maintained by the Swingline Lender concerning those Advances it has made. The Indebtedness of each Borrower resulting from Advances made by the Lenders under all Facilities other than the Swingline Facility shall be evidenced by records maintained by the Agent and each Lender concerning those Advances it has made. The records maintained by the Swingline Lender or the Agent, as applicable, shall constitute in the absence of manifest error *prima facie* evidence of the Indebtedness of each Borrower to the Lenders in respect of Advances made, and all details relating thereto. The failure by the Swingline Lender or the Agent, as applicable, or any Lender to correctly record any such amount or date shall not, however, adversely affect the Obligations of the Borrowers to pay amounts due hereunder to the Lenders in accordance with this Agreement.

## **2.9 Conversions**

Subject to the other terms of this Agreement, each Borrower may from time to time convert all or any part of the outstanding amount of any Advance under any Facility into another form of Advance permitted by this Agreement.

## **2.10 Payment and Notice of Drawdowns, Rollovers and Conversions**

- (a) Each Borrower shall give the Agent irrevocable written notice, in the form of a Conversion Notice for a Conversion, in the form of a Rollover Notice for a Rollover, and in the form of a Drawdown Notice for any subsequent Advance under the Facilities, as applicable, other than in respect of any Rollover, Conversion or Advance under the Swingline Facility.
- (b) No Drawdown Notice shall be required for any Prime Rate Advance or US Base Rate Advance made under the Swingline Facility; provided that a Borrower shall give the Swingline Lender irrevocable written notice for any Rollover or Conversion in respect of Advances under the Swingline Facility. Each Borrower shall give the Swingline Lender irrevocable written notice in the form of a Drawdown Notice for any Advance other than a Prime Rate Advance or a US Base Rate Advance, not later than 10:00 a.m. (Calgary time) on

the date of giving notice, and any such requested Advance shall be made on the second Business Day after the Drawdown Notice is received by the Swingline Lender.

- (c) If a Drawdown Notice relating to a Prime Rate Advance, US Base Rate Advance or LIBOR Advance to be made under Facility A is received by the Agent before 10:00 a.m. (Calgary time) on any Business Day, (i) such Prime Rate Advance for an amount less than \$10,000,000 or US Base Rate Advance for an amount less than US\$10,000,000 shall be advanced on the first Business Day after the Drawdown Notice is received by the Agent, (ii) such Prime Rate Advance for an amount equal to or greater than \$10,000,000 or US Base Rate Advance for an amount equal to or greater than US\$10,000,000 shall be advanced on the second Business Day after the Drawdown Notice is received by the Agent, and (iii) such LIBOR Advance shall be advanced on the third Business Day after the Drawdown Notice is received by the Agent.
- (d) Drawdown Notices relating to BA Advances, requests for BA Equivalent Loans and Letter of Credit Advances shall be given not later than 10:00 a.m. (Calgary time) on any Business Day.
- (e) Payments (other than those being made solely from the proceeds of Rollovers and Conversions) must be made prior to 10:00 a.m. (Calgary time) on any Business Day that such payment is due.
- (f) If a notice or payment is not given or made by the times required by this Section 2.10, it shall be deemed to have been given or made on the next Business Day unless all Lenders affected by the late notice or payment agree, in their sole discretion, to accept a notice or payment at a later time as being effective on the date it is given or made.

## **2.11 Co-ordination of Prime Rate, US Base Rate and LIBOR Advances – Facility A**

Each Facility A Lender shall advance its Proportionate Share of each Prime Rate Advance, US Base Rate Advance and LIBOR Advance under Facility A in accordance with the following provisions:

- (a) the Agent shall advise each Facility A Lender of its receipt of notice from a Borrower pursuant to Section 2.10, on the day such notice is received, and shall as soon as possible advise each Facility A Lender of such Lender's Proportionate Share of the Advance requested by such notice;
- (b) each Facility A Lender shall deliver its Proportionate Share of the requested Advance to the Agent not later than 12:00 noon (Calgary time) on the Drawdown Date; and
- (c) subject to meeting the conditions precedent in respect thereof by not later than 12:00 noon (Calgary time) on the Drawdown Date, the Agent shall advance to the applicable Borrower the amount delivered by each Facility A Lender by crediting the Agent's Account, provided that if the conditions precedent to the Advance are not met by 12:00 noon (Calgary time) on the Drawdown Date, the Agent shall return the funds to the Facility A Lenders or invest them in an overnight investment in the Agent's discretion until such time as the Advance is made.

## **2.12 Bankers' Acceptances - Power of Attorney**

- (a) To facilitate the acceptance of drafts hereunder, each Borrower hereby appoints each BA Lender, acting by the commercial paper clerk or other designated securities officer (the

"Attorney") for the time being at each BA Lender's branch of account, the attorney of such Borrower:

- (i) to complete and sign (by handwritten, facsimile or mechanical signature) for and on behalf and in the name of such Borrower, as drawer, drafts in each BA Lender's standard form which are "depository bills" under and as defined in the DBNA drawn on the BA Lender payable to a "clearing house" under the DBNA or its nominee for deposit by the BA Lender with the "clearing house" after acceptance thereof by the BA Lender, and
- (ii) to fill in the amount, date and maturity date of such drafts,

and drafts so completed, signed and endorsed on behalf of such Borrower by any BA Lender shall bind such Borrower as fully and effectively as if so performed by duly authorized officers of such Borrower; provided that such acts in each case are to be undertaken by the BA Lender in accordance with instructions given to the BA Lender by such Borrower as provided in this Section 2.12.

- (b) Instructions to the BA Lender relating to the execution, completion, discount and/or deposit by the BA Lender on behalf of each Borrower of drafts which such Borrower wishes to submit to the BA Lender for acceptance by the BA Lender shall be communicated by the Agent and/or such Borrower to the BA Lender in writing at its branch of account following delivery by such Borrower of a Drawdown Notice, Conversion Notice or Rollover Notice pursuant to this Agreement, and shall specify the following information:
  - (i) reference to this power of attorney;
  - (ii) a Canadian Dollar amount, which shall be the aggregate Face Amount of the drafts to be accepted by the BA Lender in respect of a particular Advance;
  - (iii) a specified period of time as provided in this Agreement which shall be the number of days after the date of acceptance of such drafts that such drafts are to be payable, and the dates of issue and maturity of such drafts; and
  - (iv) payment instructions specifying the account number of such Borrower and the financial institution at which the BA Discount Proceeds are to be credited.
- (c) The communication in writing by any Borrower to the BA Lender of the instructions referred to above shall constitute the authorization and instruction of such Borrower to the BA Lender to complete and execute drafts in accordance with such information as set out above and the request of such Borrower to the BA Lender to accept such drafts and deposit the same with the "clearing house" against payment as set out in the instructions. Each Borrower acknowledges that the BA Lender shall not be obligated to accept any such drafts except in accordance with the provisions of this Agreement. The BA Lender shall be and it is hereby authorized to act on behalf of any such Borrower upon and in compliance with instructions communicated to the BA Lender as provided herein if the BA Lender reasonably believes them to be genuine.
- (d) Each Borrower agrees to indemnify the BA Lender and its directors, officers, employees, affiliates and agents and to hold it and them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any way relating to or arising out of this power of attorney or the acts contemplated hereby including the deposit of any draft with the "clearing house"; provided

that this indemnity shall not apply to any such loss, liability, expense or claim which results from the gross negligence or willful misconduct of the BA Lender or any of its directors, officers, employees, affiliates or agents.

- (e) This power of attorney may be revoked by any Borrower at any time upon not less than five (5) Business Days' written notice served upon the BA Lender at the address set out in this Agreement; provided that (i) it may be replaced with another power of attorney forthwith in accordance with the requirements of this Agreement; and (ii) no such revocation shall reduce, limit or otherwise affect the obligations of such Borrower in respect of any draft executed, completed, discounted and/or deposited in accordance herewith prior to the time at which such revocation becomes effective. This power of attorney may be terminated by the BA Lender at any time not less than five (5) Business Days' written notice to the Borrowers. Any revocation or termination of this power of attorney shall not affect the rights of the BA Lender and the obligations of each Borrower with respect to the indemnities of each Borrower stated above.
- (f) This power of attorney is in addition to and not in substitution for any agreement to which the BA Lender and any Borrower are parties.
- (g) Each Borrower may, at its option, execute any draft by the facsimile signatures of any two authorized signing officers of that Borrower, and the Agent and each BA Lender is hereby authorized to accept or pay, as the case may be, any draft of such Borrower which has been completed pursuant to a power of attorney or which purports to bear such facsimile signatures notwithstanding that subsequent to the issuance of the Bankers' Acceptance, the power of attorney has been revoked or any such individual has ceased to be an authorized signing officer of such Borrower, and any such draft or Bankers' Acceptance so executed and completed or executed and completed pursuant to the power of attorney shall be as valid as if it has been signed by an authorized signing officer of such Borrower at the date of issue of such Bankers' Acceptance. Any such draft or Bankers' Acceptance may be dealt with by the Agent or any BA Lender to all intents and purposes and shall bind such Borrower as if duly signed in each signing officer's own handwriting and issued by such Borrower, and such Borrower hereby agrees to hold the Agent and each BA Lender harmless and indemnified against all loss, costs, damages and expenses arising out of the payment or negotiation of any such draft or Bankers' Acceptance resulting from such drafts not having been duly signed. No BA Lender shall be liable for its failure to accept a Bankers' Acceptance as required hereunder if the cause of such failure, in whole or in part, is due to the revocation or termination of the power of attorney or the failure of such Borrower to provide the power of attorney or executed drafts to the Agent on a timely basis.
- (h) The receipt by the Agent of a request for an Advance by way of Bankers' Acceptances shall be each BA Lender's sufficient authority to complete and sign (as applicable), and each BA Lender shall, subject to the terms and conditions of this Agreement, complete and sign (as applicable) such drafts in accordance with such request and the advice of the Agent given pursuant to Section 2.10, and the drafts so completed and signed (as applicable) shall thereupon be deemed to have been presented for acceptance.

### **2.13 Size and Maturity of Bankers' Acceptances and BA Equivalent Loans**

Each Advance of a Bankers' Acceptance or a BA Equivalent Loan shall be in a minimum initial amount of \$500,000 and in whole multiples of \$100,000 thereafter. Each Bankers' Acceptance or BA Equivalent Loan shall have a term which is not less than 30 days nor more than 180 days after the date of acceptance of the draft by the BA Lenders or the date of advancing such BA Equivalent Loan by the Non BA Lenders, as applicable, but no Bankers' Acceptance or BA Equivalent Loan may mature on a day which is not

a Business Day or on a date which is later than the Facility A Maturity Date. The Face Amount at maturity of a Bankers' Acceptance or a Notional Bankers' Acceptance may be Rolled Over or Converted into another form of Advance permitted by this Agreement.

#### 2.14 Co-ordination of BA Advances and BA Equivalent Loans – Facility A

Each Facility A Lender shall advance its Proportionate Share of each Advance by way of Bankers' Acceptances and BA Equivalent Loans in accordance with the following provisions:

- (a) the Agent, as soon as reasonably practicable following its receipt of a notice from a Borrower pursuant to Section 2.10 requesting an Advance by way of Bankers' Acceptances under Facility A, shall (i) advise each BA Lender of the Face Amount of the Bankers' Acceptances to be accepted by it, and (ii) advise each Non BA Lender of the Face Amount of its Notional Bankers' Acceptance. The aggregate Face Amount of the Bankers' Acceptances to be accepted by a BA Lender and the Face Amount of the Notional Bankers' Acceptance for each Non BA Lender shall be determined by the Agent by reference to the respective Commitments of the Lenders under Facility A; provided that, if the Face Amount of a Bankers' Acceptance in the case of a BA Lender or the Face Amount of a Notional Bankers' Acceptance used to determine the amount of a BA Equivalent Loan in the case of a Non BA Lender would not be \$500,000 or a whole multiple thereof, the Face Amount shall be increased or reduced by the Agent in its sole discretion to the nearest whole multiple of \$100,000;
- (b) whenever a Borrower requests an Advance under Facility A that includes Bankers' Acceptances, each Non BA Lender shall, in lieu of accepting its *pro rata* amount of such Bankers' Acceptances, make available to such Borrower on the Drawdown Date a loan (a "**BA Equivalent Loan**") in Cdn Dollars and in an amount which would be equal to the BA Discount Proceeds of the Bankers' Acceptances (which are referred to herein collectively as "**Notional Bankers' Acceptances**") that such Non BA Lender would have been required to accept on the Drawdown Date if it were a BA Lender. Each Non BA Lender shall also be entitled to deduct from the BA Equivalent Loan an amount equal to the applicable BA Fee that would have been applicable to the Notional Bankers' Acceptance had it been a Bankers' Acceptance;
- (c) subject to the terms and conditions of this Agreement, each BA Lender agrees to accept drafts issued by the Borrowers pursuant to this Section 2.14 and purchase such Bankers' Acceptances discounted at the applicable BA Discount Rate. Each BA Lender shall provide the BA Discount Proceeds thereof to the Agent, less the BA Fee payable to such BA Lender. Each such BA Lender shall be entitled to sell, assign or otherwise transfer such Bankers' Acceptances to any third party without any notice to or the consent of the Borrowers;
- (d) each BA Lender and Non BA Lender, as applicable, shall transfer to the Agent for value on each Drawdown Date immediately available Cdn Dollars in an aggregate amount equal to (i) in the case of a BA Lender, the BA Discount Proceeds (net of the applicable BA Fee in respect of such Bankers' Acceptances) of all Bankers' Acceptances accepted by it on such Drawdown Date, and (ii) in the case of a Non BA Lender, the amount of each BA Equivalent Loan (net of the applicable BA Fee in respect of such BA Equivalent Loan) to be made by it on the Drawdown Date. The Agent may designate such offices in Toronto or Calgary as it may see fit for the purposes referred to in this Section 2.14. The Agent shall make such amounts received by it from the BA Lenders as aforesaid available to the Borrowers by crediting the Agent's Account on the applicable Drawdown Date;

- (e) each Borrower hereby authorizes each BA Lender to complete, stamp, hold, sell, rediscount or otherwise dispose of all Bankers' Acceptances accepted by it in accordance with the instructions provided by such Borrower hereunder or pursuant to the power of attorney referred to in Section 2.12; and
- (f) if a Borrower requests that a BA Lender complete incomplete drafts pursuant to telephone instructions, such instructions are at the risk of such Borrower until confirmed in writing and the BA Lender shall not have any liability for any failure to carry out the same, in whole or in part, or for any error or omission in such instructions or the interpretation or execution thereof by such BA Lender.

## **2.15 Payment of Bankers' Acceptances and BA Equivalent Loans**

Each Borrower shall provide for payment to the Swingline Lender (in the case of the Swingline Facility) or to the Agent for the account of the applicable BA Lender or Non BA Lender (in the case of Facility A), as the case may be, the full Face Amount of each Bankers' Acceptance and each Notional Bankers' Acceptance made available to such Borrower on the earlier of (i) its date of maturity, and (ii) the date on which the Swingline Lender or the Agent (acting upon instructions of the Majority Lenders), as the case may be, demands payment of the Obligations outstanding under the respective Facilities.

## **2.16 Deemed Advances - Bankers' Acceptances**

Except in the case of amounts which are paid from the proceeds of a Rollover of a Bankers' Acceptance or BA Equivalent Loan or other Advance or Conversion hereunder, any amount which a BA Lender pays to any third party on or after the date of maturity of a Bankers' Acceptance in satisfaction thereof or which is owing to a BA Lender by a Borrower in respect of such Bankers' Acceptance or BA Equivalent Loan on or after the date of maturity of such Bankers' Acceptance or BA Equivalent Loan shall be deemed to be a Prime Rate Advance made to that Borrower under this Agreement. If a Borrower fails to give notice to the Agent upon a Rollover of a maturing Bankers' Acceptance or BA Equivalent Loan, the Agent will be entitled to assume that such amounts are deemed to be a Prime Rate Advance made to that Borrower and give notice thereof to the Applicable Lenders. Interest shall be payable on such Prime Rate Advances in accordance with the terms applicable to Prime Rate Advances.

## **2.17 LIBOR Periods**

Each Borrower may select, by irrevocable notice to the Swingline Lender (in the case of the Swingline Facility) or the Agent (in the case of Facility A), the LIBOR Period to apply to any particular LIBOR Advance. Each Borrower shall from time to time select and give notice to the Swingline Lender or the Agent, as applicable, of the LIBOR Period for a LIBOR Advance which shall commence upon the making of the LIBOR Advance or at the expiry of any outstanding LIBOR Period applicable to a LIBOR Advance that is being Rolled Over. If a Borrower fails to select and give notice of a LIBOR Period for a LIBOR Advance in accordance with Section 2.10, any such LIBOR Advance shall be made as a US Base Rate Advance or converted to a US Base Rate Advance on the last day of the LIBOR Period applicable to such LIBOR Advance.

## **2.18 Termination of LIBOR Advances**

If at any time any Lender determines, acting reasonably (which determination shall be conclusive and binding on the Borrowers), that:

- (a) adequate and reasonable means do not exist for ascertaining the LIBOR Rate applicable to a LIBOR Advance;

- (b) the LIBOR Rate does not adequately reflect the effective cost to the Lender of making or maintaining its Proportionate Share of a LIBOR Advance; or
- (c) it cannot readily obtain or retain funds in the London interbank market in order to fund or maintain any LIBOR Advance,

then, upon not less than three (3) Business Days' written notice from the Swingline Lender or the Agent, as the case may be, to the Borrowers,

- (d) the right of the Borrowers to request LIBOR Advances from the Applicable Lenders shall be and remain suspended until the Swingline Lender or the Agent, as the case may be, notifies the Borrowers that any condition which caused such determination no longer exists; and
- (e) if the Swingline Lender is prevented from maintaining a LIBOR Advance under the Swingline Facility, or if any Lender is prevented from maintaining its Proportionate Share of a LIBOR Advance under Facility A, the Borrowers shall, at their option, either repay the LIBOR Advance or convert the LIBOR Advance into one or more other forms of Advance which are permitted by this Agreement, and the Borrowers shall not be responsible for any loss or expense that the Agent and the Lenders incur as a result, including breakage costs, notwithstanding that such repayment or Conversion does not occur on the last day of a LIBOR Period.

## **2.19 Waiver**

The Borrowers shall not claim from a Lender or any other person any days of grace for the payment at maturity of any Bankers' Acceptances or Notional Bankers' Acceptances presented and accepted by a Lender pursuant to this Agreement. Each Borrower waives any defense to payment which might otherwise exist if for any reason a Bankers' Acceptance shall be held by a BA Lender in its own right at the maturity thereof, and the doctrine of merger shall not apply to any Bankers' Acceptance that is at any time held by a BA Lender in its own right.

## **2.20 Degree of Care**

Any executed drafts to be used as Bankers' Acceptances which are delivered to a BA Lender shall be held in safekeeping with the same degree of care as if they were such Lender's own property, and shall be kept at the place at which such drafts are ordinarily held by such BA Lender.

## **2.21 Indemnity - Bankers' Acceptances**

Each Borrower hereby jointly and severally indemnifies and holds each Lender harmless from any loss or expense with respect to any Bankers' Acceptance dealt with by the BA Lenders, or any of them, in accordance with the provisions hereof, but shall not be obliged to indemnify a Lender for any loss or expense caused by the gross negligence or willful misconduct of that Lender.

## **2.22 Obligations Absolute**

The obligations of the Borrowers with respect to Bankers' Acceptances under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation, the following circumstances:

- (a) any lack of validity or enforceability of any draft accepted by a BA Lender as a Bankers' Acceptance; or

- (b) the existence of any claim, set-off, defense or other right which the Borrowers may have at any time against the holder of a Bankers' Acceptance, the BA Lenders (or any of them) or any other person or entity, whether in connection with this Agreement or otherwise.

## **2.23 Letters of Credit**

Upon timely fulfillment of all applicable conditions as set forth in this Agreement, but subject to the limitations in Section 2.24 or 2.25, as applicable, the Swingline Lender (in the case of the Swingline Facility) or the Agent (in the case of Facility A) agrees to issue Letters of Credit on any Business Day for the account of a Borrower. Letters of Credit issued by the Agent shall be issued by the Agent on behalf of the Facility A Lenders each of which shall participate therein to the extent of its Proportionate Share.

## **2.24 Letter of Credit Procedures and Limitations – Swingline Facility**

The following provisions shall apply to Letter of Credit Advances issued under the Swingline Facility:

- (a) each Borrower shall give notice of each requested Letter of Credit Advance in accordance with the normal practices of the Swingline Lender;
- (b) single Letter of Credit Advances up to \$250,000 per single issuance shall be requested under the Swingline Facility, and a maximum aggregate amount of \$10,000,000 of Letter of Credit Advances (determined in Cdn Dollars with all Letter of Credit Advances in US Dollars being converted to the Equivalent Amount of Cdn Dollars) may be issued and outstanding under the Swingline Facility at any time;
- (c) each Letter of Credit under the Swingline Facility shall expire not later than 364 days from its date of issuance;
- (d) the Swingline Lender shall have no obligation to issue a Letter of Credit until:
  - (i) the Swingline Lender has received notice of and acknowledged a Borrower's request therefor,
  - (ii) the applicable fee(s) have been paid,
  - (iii) such ancillary documents, including applications and indemnities, as it normally requires for similar transactions have been executed and delivered to it, and
  - (iv) in the case of the Conversion of an existing Advance to a Letter of Credit Advance, the full amount of the Advance being converted together with all interest, fees and other amounts applicable thereto have been paid to the Swingline Lender; and
- (e) all payments made by the Swingline Lender to any person pursuant to a Letter of Credit shall, unless such Borrower reimburses the Swingline Lender for such payment on or before the date it is made, be deemed as and from the date of such payment to be a Prime Rate Advance, in the case of a Cdn Dollar Letter of Credit, or a US Base Rate Advance, in the case of a US Dollar Letter of Credit, with the proceeds of such Prime Rate Advance or US Base Rate Advance being applied against such Borrower's Obligations to reimburse the Swingline Lender for payment made under the Letter of Credit.

## 2.25 Letter of Credit Procedures and Limitations – Facility A

The following provisions shall apply to Letter of Credit Advances issued under Facility A:

- (a) each Borrower shall give notice of each requested Letter of Credit Advance in accordance with the normal practices of the Agent;
- (b) single Letter of Credit Advances greater than \$250,000 shall be requested under Facility A, and up to a maximum aggregate amount of \$60,000,000 of Letter of Credit Advances (determined in Cdn Dollars with all Letter of Credit Advances in US Dollars being converted to the Equivalent Amount of Cdn Dollars) may be issued and outstanding under Facility A at any time;
- (c) each Letter of Credit under Facility A shall expire not later than two years from its date of issuance;
- (d) the Agent shall have no obligation to issue a Letter of Credit until:
  - (i) each Facility A Lender has received notice of and acknowledged a Borrower's request therefor,
  - (ii) the applicable fee(s) have been paid,
  - (iii) such ancillary documents, including applications and indemnities, as it normally requires for similar transactions have been executed and delivered to it, and
  - (iv) in the case of the Conversion of an existing Advance to a Letter of Credit Advance, the full amount of the Advance being converted together with all interest, fees and other amounts applicable thereto have been paid to such Lender; and
- (e) all payments made by any Lender to any person pursuant to a Letter of Credit shall, unless such Borrower reimburses such Lender for such payment on or before the date it is made, be deemed as and from the date of such payment to be a Prime Rate Advance, in the case of a Cdn Dollar Letter of Credit, or a US Base Rate Advance, in the case of a US Dollar Letter of Credit, with the proceeds of such Prime Rate Advance or US Base Rate Advance being applied against such Borrower's Obligations to reimburse the Lender for payment made under the Letter of Credit.

## 2.26 Letter of Credit Indemnity

Each Borrower hereby jointly and severally indemnifies and holds the Swingline Lender (in the case of the Swingline Facility) and the Agent and each Facility A Lender (in the case of Facility A) harmless from and against any loss or expense with respect to any Letter of Credit Advances made at its request pursuant to this Agreement, including to the extent of:

- (a) any payment made thereunder to and for the account of the applicable beneficiary thereof, including all obligations imposed by foreign laws and all fees and commissions and all charges and expenses paid or incurred by the issuing Lenders and/or the Agent in connection with the Letter of Credit plus any interest, where applicable;
- (b) all losses, costs, damages or expenses suffered or incurred by the issuing Lenders and/or the Agent in any manner whatsoever by reason or in consequence of making any Letter of Credit Advance, either directly or indirectly, or any renewal thereof;

- (c) any claim that the issuing Lenders and/or the Agent should have refrained from making payment under any Letter of Credit by virtue of (i) being aware, actually, constructively or otherwise, of facts justifying a decision to decline making a payment under the Letter of Credit, or (ii) some impropriety by the beneficiary or its successors, assigns or other persons in seeking payment under the Letter of Credit;
- (d) all claims and expenses, whether awarded by a court or not, incurred by the issuing Lenders and/or the Agent in the prosecution or defence of any claim in any way related to the Letter of Credit; and
- (e) legal fees on a solicitor and client basis incurred in connection with any of the foregoing.

## **2.27 Ancillary Facilities**

In addition to its Proportionate Share of the Facilities, the Lenders have agreed to provide the following ancillary facilities (collectively, the "**Ancillary Facilities**") in favour of the Borrowers; provided that, in the case of (a) and (b) below, the Borrowers and the Material Entities shall not use the same for speculative purposes:

- (a) forward foreign exchange facility which permits the Borrowers and the Material Entities to enter into a foreign exchange facility of up to US\$10,000,000 for periods of up to 12 months from the date the forward foreign exchange contract is entered into with any Lender;
- (b) interest rate protection agreement(s) with one or more Lenders based on a notional maximum amount of \$125,000,000 for a maximum term of up to 5 years; and
- (c) business VISA, Mastercard or other similar credit card line with any Lender.

For greater certainty, the Ancillary Facilities are deemed to be Obligations of the Borrowers and the Material Entities, as the case may be, and are secured by the Security.

## **2.28 Swaps Cross Default and Rank Pari Passu**

Subject to the terms and conditions of this Agreement, and in addition to the Swaps referred to in Section 2.27 above, each of the Swap Lenders may from time to time enter into Eligible Swaps with any Borrower or Material Entity during the term of this Agreement. Prior to engaging in any such Eligible Swaps, any such Borrower or Material Entity shall enter into an ISDA Master Agreement with the applicable Swap Lender the terms of which are not inconsistent with this Agreement and which provide for cross default hereto. The parties agree that all Indebtedness under Eligible Swaps shall be secured by the Security on a *pari passu* basis and shall rank *pari passu* with all Indebtedness under the Facilities.

## **2.29 Joint and Several Liability**

All Obligations owing to the Agent, the Lenders and any Swap Lender by each Borrower shall be jointly and severally binding on all Borrowers, and the Security granted by each Borrower shall secure all of the Obligations irrespective as to which Borrower incurred any such Obligations.

**ARTICLE III**  
**EXTENSION, REPAYMENT AND PREPAYMENT**

**3.1 Reduction of Swingline Facility Commitment and Repayment of Borrowings**

Unless the Swingline Lender has agreed, in its sole and absolute discretion, to an extension of the Revolving Period for the Swingline Facility, any undrawn portion of the Swingline Facility on the Swingline Maturity Date shall automatically be cancelled and all Indebtedness under the Swingline Facility will become immediately due and payable. The Borrowers shall ensure that all LIBOR Advances, Bankers' Acceptances and Letters of Credit issued under the Swingline Facility shall mature on or prior to the Swingline Maturity Date.

**3.2 Reduction of Facility A Commitments and Repayment of Borrowings**

Unless the Facility A Lenders have agreed, in their sole and absolute discretion, to an extension of the Revolving Period for Facility A, any undrawn portion of Facility A on the Facility A Maturity Date shall automatically be cancelled and all Indebtedness under Facility A will become immediately due and payable. The Borrowers shall ensure that all LIBOR Advances, Bankers' Acceptances and Letters of Credit issued under Facility A shall mature on or prior to the Facility A Maturity Date.

**3.3 Reduction of Facility B Commitments and Repayment of Borrowings**

CCS shall repay to the Facility B Lenders all outstanding Indebtedness in respect of Facility B by way of (i) one principal repayment in the amount of all Outstanding Principal under Facility B due on the Facility B Maturity Date, and (ii) payments of accrued interest due and payable monthly in arrears on each Interest Payment Date; until all outstanding Indebtedness under Facility B owing to the Applicable Lenders has been repaid and satisfied in full.

**3.4 Repayment of Outstandings in Excess of Commitments Due to Exchange Fluctuations**

If the amount of Outstanding Principal (determined in Cdn Dollars with all Advances denominated in US Dollars being converted to the Equivalent Amount of Cdn Dollars) under a particular Facility owing to any Lender due to exchange rate fluctuations is on any day in excess of the amount of such Lender's Commitment in respect of such Facility, the Borrowers shall within five (5) Business Days after receiving notice thereof (i) repay such excess, (ii) provide cash collateral to be held by the Swingline Lender (in the case of the Swingline Facility) or the Agent (in the case of all Facilities other than the Swingline Facility) on behalf of the Applicable Lenders, or (iii) otherwise reduce a portion of such Advances under the particular Facility to the extent of the amount of the excess.

**3.5 Extension of the Revolving Period – Swingline Facility and Facility A**

- (a) **Request for Extension.** Not more than once in any calendar year, not less than nine (9) months from the date of its most recent Request for an Offer of Extension, and not less than one (1) year prior to the then current Maturity Date, the Borrowers may request an Offer of Extension in respect of the Swingline Facility and Facility A from each Lender which has not yet refused (or been deemed to refuse) to extend the Swingline Maturity Date or the Facility A Maturity Date, as the case may be, pursuant to any prior Request for an Offer of Extension (each, a "**Requested Lender**"), to a specified Business Day falling within three (3) years from the anticipated Decision Date (as defined below) (such requested date being the "**New Maturity Date**") by delivering to the Agent an executed Request for an Offer of Extension. The Agent shall forthwith, and in any event within two (2) Business Days, notify the Swingline Lender (in the case of the Swingline Facility) and each Requested Lender (in the case of Facility A) of such request by the Borrowers (such date being the "**Notification**

**Date**"). Each Requested Lender shall advise the Agent as to whether or not it agrees to such request not later than twenty (20) Business Days after the Notification Date; provided that in the event any Requested Lender (including the Swingline Lender) does not so advise the Agent within such twenty (20) Business Day period, such Requested Lender shall be deemed to have elected not to agree to such request. Within two (2) Business Days of the Agent having received from all Requested Lenders their respective decision or deemed decision with regard to the Request for an Offer of Extension (the "**Decision Date**"), the Agent shall, unless the provisions of clause (c) below are applicable at that time, advise the Borrowers which Lenders have agreed to extend the Maturity Date to the New Maturity Date pursuant to such Request for an Offer of Extension, and deliver to the Borrowers an Offer of Extension. Any such Offer of Extension shall be open for acceptance by the Borrowers until the Business Day which is six (6) months prior to the then current Maturity Date. Upon written notice being provided by the Borrowers to the Agent accepting an outstanding Offer of Extension and agreeing to the terms and conditions specified therein, the Swingline Maturity Date and the Facility A Maturity Date shall be extended to the New Maturity Date.

- (b) **Agreeing Lenders and Non-Agreeing Lenders.** For the purposes of this Section 3.4:
- (i) a "**Non-Agreeing Lender**" means any Requested Lender which does not agree (or is deemed not to have agreed) to extend the Maturity Date pursuant to Section 3.5(a); and
  - (ii) an "**Agreeing Lender**" means any Requested Lender which agrees to extend the Maturity Date pursuant to Section 3.5(a).
- (c) **Non-Extension.** If, in respect of any Request for an Offer of Extension, at least two Non-Agreeing Lenders hold in aggregate more than one-third (33⅓%) of the Commitments of all Requested Lenders, then:
- (i) the Maturity Date for all Requested Lenders shall not be extended; and
  - (ii) the Borrowers shall not be entitled to request any further extensions of the Swingline Maturity Date or the Facility A Maturity Date.
- (d) **Extension of All Requested Lenders.** If all Requested Lenders agree to the Request for an Offer of Extension and the Borrowers accept such Offer of Extension pursuant to Section 3.5(a), then the Swingline Maturity Date and the Facility A Maturity Date for all Requested Lenders shall be extended to the New Maturity Date pursuant to such request.
- (e) **Payment or Replacement.** If, after any Request for an Offer of Extension pursuant to Section 3.5(a), the provisions of Section 3.5(c) or (d) are not applicable, then:
- (i) each of the Agreeing Lenders shall have the right, but not the obligation, to purchase the Commitment of any Non-Agreeing Lender, and each of the Agreeing Lenders wishing to exercise its rights to purchase the Commitment of a Non-Agreeing Lender (each, a "**Purchasing Lender**") shall forthwith so notify the Borrowers, the Agent and the other Lenders, and such Purchasing Lender shall thereupon be obligated to purchase not less than the thirtieth (30th) day after the Decision Date an amount of such Commitment equal to the Commitment of the Non-Agreeing Lender multiplied by such Purchasing Lender's Proportionate Share of Facility A over the aggregate of all Purchasing Lenders' Proportionate Share of Facility A, or as otherwise agreed to by the Borrowers and all Purchasing Lenders. If the Swingline Lender is a Non-Agreeing Lender and there is more than one Purchasing Lender, the

Borrowers shall choose which Purchasing Lender shall acquire the Swingline Commitment of the Swingline Lender. The Non-Agreeing Lender, the Purchasing Lender(s), the Agent, the Borrowers and each of the other Lenders, if any, shall forthwith duly execute and deliver any necessary documentation to give effect to such purchase, whereupon the Non-Agreeing Lender shall, as of the effective date thereof, be released from its obligations to the Borrowers hereunder and under the other Credit Documents arising subsequent to such date; or

- (ii) if none of the Agreeing Lenders exercises its rights under Section 3.4, the Borrowers may, but are not obligated to:
  - (A) so long as there exists no Event of Default which is continuing, repay all Obligations owing hereunder to any such Non-Agreeing Lender on or prior to the thirtieth (30<sup>th</sup>) day after the Decision Date, and upon such payment any such Non-Agreeing Lender shall cease to be a Lender hereunder and each such Non-Agreeing Lender's Commitment shall be terminated and the Total Commitment reduced accordingly; or
  - (B) arrange for a replacement lender (or lenders) (which may be one or more Lenders) to replace each Non-Agreeing Lender's Advances and its Commitment; provided that any such replacement lender (or lenders) (if not already a Lender hereunder) shall have been approved by the Agent (acting reasonably), shall qualify as a permitted assignee pursuant to Section 11.2 and all other requirements hereunder shall have been satisfied on or prior to the thirtieth (30<sup>th</sup>) day after the Decision Date, and in respect of which the Lenders shall do all things and make all such adjustments as are reasonably necessary to give effect to any such replacement.
- (f) **Partial Extension.** If, with respect to any Request for an Offer of Extension, the provisions of Sections 3.5(c) or (d) are not applicable, and if after any replacements or repayments under Section 3.5(e) there are remaining Non-Agreeing Lenders, then:
  - (i) the Swingline Maturity Date and the Facility A Maturity Date for the Agreeing Lenders shall be extended to the New Maturity Date pursuant to the Request for an Offer of Extension;
  - (ii) for those Non-Agreeing Lenders under Facility A, the Facility A Maturity Date of all such Lenders shall not be extended; and
  - (iii) in the case of Section 3.5(f)(ii), the Borrowers shall not be entitled to request any further extensions to the Facility A Maturity Date from such Non-Agreeing Lenders.
- (g) **Independent Decision.** Each Borrower understands that consideration of any Request for an Offer of Extension constitutes an independent credit decision which each Lender retains the absolute and unfettered discretion to make, and that no commitment in this regard is hereby given by any Lender.
- (h) **Default or Event of Default.** Notwithstanding the foregoing, the Borrowers shall not be entitled to accept any offer made by the Agent on behalf of the Agreeing Lenders to extend the Swingline Maturity Date and the Facility A Maturity Date if a Default or Event of Default has occurred and is continuing, unless such Default or Event of Default is waived by all of the Agreeing Lenders; provided that any such waiver shall be effective only for the purposes of this Section 3.5.

- (i) **Successive Extensions.** This Section 3.5 shall apply from time to time to permit successive extensions of the Swingline Maturity Date and the Facility A Maturity Date, if and for so long as the Swingline Lender (in the case of the Swingline Facility) and the Agreeing Lenders (in the case of Facility A) have agreed to all prior extensions in accordance with the foregoing, as applicable.

### 3.6 Voluntary Prepayment – Swingline Facility and Facility A

Subject to this Section 3.6, a Borrower may from time to time prepay Indebtedness outstanding by it under the Swingline Facility or Facility A by making deposits to the applicable Borrowers' Account (in respect of repayments of the Swingline Facility) or to the applicable Agent's Account (in respect of repayments of Facility A), as the case may be, except that (i) LIBOR Advances may not be repaid prior to the end of the applicable LIBOR Periods unless such Borrower indemnifies the Agent for any loss or expense that the Agent on behalf of the Lenders incurs as a result thereof, including any breakage costs as set forth in Section 12.7; and each such prepayment shall be in a minimum amount of US\$1,000,000 and in whole multiples of US\$100,000 thereafter, (ii) Bankers' Acceptances and BA Equivalent Loans may not be prepaid prior to their respective maturity dates; (iii) repayments of Prime Rate Advances and US Base Rate Advances under the Swingline Facility may be made at any time without notice and shall not be subject to any minimum repayment amounts; and (iv) except as otherwise provided above in this Section 3.6, notice of an intended prepayment of any Advance under Facility A shall be given with the same number of Business Days prior notice as matches the Drawdown Notice period under Section 2.10 for that kind of Advance.

### 3.7 Voluntary Prepayment – Facility B

CCS shall not be permitted to prepay any Indebtedness outstanding under Facility B prior to the Facility B Maturity Date unless and until CCS concurrently pays to the Agent for and on behalf of the Facility B Lenders, in each such circumstance, the related Make-Whole Amount as a breakage fee.

### 3.8 Mandatory Prepayment

All net proceeds from (i) any debt issue other than Permitted Indebtedness and Debt secured by a Permitted Encumbrance, and (ii) the disposition of assets by the Borrowers and the Material Entities in excess of \$20,000,000 in aggregate for any Fiscal Year (if not reinvested in similar assets within 90 days of disposition pursuant to Section 8.9), in either case, shall be used by the Borrowers to permanently repay Obligations under Facility A and, at the election of the Facility B Lenders, under Facility B, on a Proportionate Share basis and concurrently with each such repayment, each Applicable Lender's Commitment under the Facilities shall automatically be reduced by its Proportionate Share of each such repayment. For greater certainty, the Facility B Lenders (or any of them) may elect not to participate in receiving any such repayment, but if the Facility B Lenders (or any of them) elect to so participate, any amounts repaid to such Facility B Lenders shall be applied firstly to unpaid accrued interest, if any, and secondly to Outstanding Principal under Facility B in the inverse order of maturity, and the Make-Whole Amount shall not be payable with respect to any repayments made to the Facility B Lenders under this Section 3.8.

### 3.9 Takeover Notification

In the event any Borrower wishes to utilize Advances to, or to provide funds to any Material Entity to, acquire or offer to acquire, directly or indirectly (which shall include an offer to purchase securities, solicitation of an offer to sell securities, or an acceptance of an offer to sell securities, whether or not the offer to sell was solicited, or any combination of the foregoing), outstanding Shares or other securities of any person (other than (i) a private issuer as defined under the *Securities Act* (Alberta), or (ii) a corporation or limited partnership whose shares or units are directly or indirectly held by one person) (for the purposes of this Section 3.9, the "**Target**") where, as of the date of the offer to acquire, the Shares or other securities that are subject to the offer to acquire, together with the Shares or other securities of the Target that are

beneficially owned, or over which control or direction is exercised, by any Borrower or Material Entity and any person acting jointly or in concert with any thereof on the date that the offer to acquire is made, constitute in the aggregate the lesser of such percentage of outstanding Shares or other securities as is considered to be a "takeover bid" under any law or regulation applicable to the Target and ten percent (10%) or more of all of the outstanding Shares or other securities of the Target (a "**Takeover**"), then either:

- (a) **Agreement of the Target:** prior to or concurrently with delivery to the Agent of any Drawdown Notice pursuant to Section 2.10 requesting one or more Advances, the proceeds of which are to be utilized to finance such Takeover, the Borrowers shall provide to the Agent evidence satisfactory to the Agent (acting reasonably) that the board of directors or like body of the Target, or the holders of all of the Shares or other securities of the Target, has or have approved, accepted or recommended to securityholders acceptance of the Takeover; or
- (b) **No Conflict by Lenders:** the following steps shall be followed:
  - (i) at least seven (7) Business Days prior to the delivery of any Drawdown Notice to the Agent pursuant to Section 2.10 requesting one or more Advances intended to be utilized for such Takeover, the Borrowers shall advise the Agent (who shall promptly advise each Lender) of the particulars of such Takeover in sufficient detail to enable such Lender to determine whether it has a conflict of interest if Advances from such Lender are utilized by the Borrowers for such Takeover;
  - (ii) within five (5) Business Days of being so advised, each Lender shall notify the Agent of such Lender's determination, acting reasonably, as to whether such a conflict of interest exists (such determination to be made by such Lender in the exercise of its sole discretion, having regard to such considerations as it deems appropriate), provided that in the event such Lender does not so notify the Agent within such five (5) Business Day period, such Lender shall be deemed to have notified the Agent that it has such a conflict of interest; and
  - (iii) the Agent shall promptly notify the Borrowers of each Lender's determination or deemed determination;

and in the event that any Lender has, or is deemed to have, such a conflict of interest (each, a "**Conflicted Lender**"), the Conflicted Lender shall have no obligation to provide Advances to finance such Takeover notwithstanding any other provision of this Agreement to the contrary; provided, however, that each Lender that is not a Conflicted Lender (each, a "**Non-Conflicted Lender**") shall have an obligation, up to the amount of its applicable Commitment and subject to the terms, conditions and limitations of this Agreement, to provide Advances to finance such Takeover in accordance with the ratio that its Proportionate Share bears to the aggregate of the Proportionate Shares of all the Non-Conflicted Lenders; and

- (c) **Takeover Loans:** If Advances are utilized to finance a Takeover (a "**Takeover Loan**") and there are Conflicted Lenders, the Proportionate Share of each Conflicted Lender shall be temporarily adjusted in accordance with Section 3.9(b) above and, as applicable, Advances made subsequent to those Advances used to finance the Takeover shall be funded firstly by Conflicted Lenders, and subsequent repayments shall be applied firstly to Non-Conflicted Lenders, in each case, until such time as each Lender is owed its Proportionate Share of the outstanding Obligations as in effect immediately prior to any Advance being made in respect of the Takeover Loan.

**ARTICLE IV**  
**INTEREST RATES AND FEES**

**4.1 Interest on Prime Rate Advances**

Each Borrower shall pay to the Swingline Lender (in the case of Prime Rate Advances under the Swingline Facility) or to the Agent on behalf of each Applicable Lender (in the case of Prime Rate Advances under Facility A) interest on each Prime Rate Advance made available to it in Canadian Dollars at a rate per three hundred sixty-five (365) day period equal to the Prime Rate plus the Applicable Margin. A change in the Prime Rate will simultaneously cause a corresponding change in the interest payable for a Prime Rate Advance and a change in the Applicable Margin will cause a change in the interest payable as provided for in the definition of "Applicable Margin". Such interest shall be calculated monthly in arrears and be payable on each Interest Payment Date for the calendar month immediately prior to the Interest Payment Date and shall be calculated on the basis of the actual number of days elapsed in a year of three hundred sixty-five (365) days. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 4.1 are equivalent are the rates so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by three hundred sixty-five (365).

**4.2 Interest on US Base Rate Advances**

Each Borrower shall pay to the Swingline Lender (in the case of US Base Rate Advances under the Swingline Facility) or to the Agent on behalf of each Applicable Lender (in the case of US Base Rate Advances under Facility A) interest on each US Base Rate Advance made available to it in US Dollars at a rate per three hundred sixty-five (365) day period equal to the US Base Rate plus the Applicable Margin. A change in the US Base Rate will simultaneously cause a corresponding change in the interest payable for a US Base Rate Advance and a change in the Applicable Margin will cause a change in the interest payable as provided for in the definition of "Applicable Margin". Such interest shall be calculated monthly in arrears and be payable on each Interest Payment Date for the calendar month immediately prior to the Interest Payment Date and shall be calculated on the basis of the actual number of days elapsed in a year of three hundred sixty-five (365) days. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 4.2 are equivalent, are the rates so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by three hundred sixty-five (365).

**4.3 Interest on LIBOR Advances**

Each Borrower shall pay to the Swingline Lender (in the case of LIBOR Advances under the Swingline Facility) or to the Agent on behalf of each Applicable Lender (in the case of LIBOR Advances under Facility A) interest on each LIBOR Advance made available to it in US Dollars at a rate per three hundred sixty (360) day period equal to the LIBOR Rate plus the Applicable Margin. Such interest is payable on the last day of the applicable LIBOR Period and, if the LIBOR Period is longer than 90 days, on the 90<sup>th</sup> day after the date of the relevant LIBOR Advance and on the 90<sup>th</sup> day after the date of the last interest payment, as the case may be. All interest shall accrue from day to day and shall be payable in arrears for the actual number of days elapsed from and including the date of the LIBOR Advance or the previous date on which interest was payable, as the case may be, to but excluding the date on which interest is payable or the last day of the LIBOR Period, as the case may be, both before and after maturity, demand, default and judgment, with interest on overdue principal and interest at the same rate payable on demand. Interest calculated with reference to a LIBOR Advance shall be calculated on the basis of a year of 360 days and for a term equal to the applicable LIBOR Period or, if a LIBOR Period is longer than 90 days, every 90 days and at the end of the LIBOR Period. In this Agreement, each rate of interest which is calculated with reference to a period (the "**deemed interest period**") that is less than the actual number of days in the calendar year of calculation is, for the purposes of the *Interest Act* (Canada), equivalent to a rate based on a calendar year

calculated by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing by the number of days in the deemed interest period.

#### **4.4 BA Fees**

Each Borrower shall pay to the Swingline Lender (in the case of BA Advances under the Swingline Facility) or to the Agent on behalf of each Applicable Lender (in the case of BA Advances under Facility A) BA Fees in Canadian Dollars forthwith upon the acceptance by each BA Lender of each Bankers' Acceptance, or the making by each Non BA Lender of each BA Equivalent Loan, issued at the request of such Borrower at a rate per three hundred sixty-five (365) day period equal to the Applicable Margin, calculated on the Face Amount of each such Bankers' Acceptance or BA Equivalent Loan and on the basis of the number of days in the term of such Bankers' Acceptance or BA Equivalent Loan divided by three hundred sixty-five (365). All fees payable pursuant to this Section 4.4 on any date in respect of any issuance of Bankers' Acceptances or BA Equivalent Loans shall be calculated by the Agent and be payable by such Borrower based on the Applicable Margin in effect on such date; provided that if during the term of any such Bankers' Acceptance or BA Equivalent Loan a change in the Applicable Margin occurs, the fees paid by such Borrower in respect of such Bankers' Acceptance or BA Equivalent Loan shall be adjusted, effective at the beginning of the Fiscal Quarter next following the Fiscal Quarter in which the change in the Applicable Margin occurs pursuant to the definition of "Applicable Margin", to reflect the Applicable Margin for the remaining term of the Bankers' Acceptance or BA Equivalent Loan, and such Borrower, in the case of an increase in the Applicable Margin, shall forthwith after receipt of a notice from the Agent make such payments as are necessary to reflect such change, and the BA Lenders or Non BA Lenders, as the case may be, in the case of a decrease in the Applicable Margin, shall credit any amount which would otherwise be refundable to such Borrower against amounts in respect of interest or fees accruing hereunder in relation to such Borrower.

#### **4.5 Interest on Facility B**

The single Advance under Facility B shall bear interest, from and including the Drawdown Date (which for greater certainty was December 10, 2004), at a fixed rate per annum equal to 235 bps credit spread over the seven (7) year government Reference Bond as at such Drawdown Date. CCS shall pay such interest to the Agent, on behalf of each Facility B Lender, in Cdn Dollars, and such interest is payable monthly in arrears on each Interest Payment Date for the calendar month immediately prior to the Interest Payment Date and shall be calculated on the basis of the actual number of days elapsed in a year of three hundred sixty-five (365) days. The annual rate of interest to which the rate determined in accordance with the foregoing provisions of this Section 4.5 is equivalent is the rate so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by three hundred sixty-five (365).

#### **4.6 Letter of Credit Fees**

Each Borrower shall pay to the Swingline Lender (in the case of Letter of Credit Advances under the Swingline Facility) or to the Agent (in the case of Letter of Credit Advances under Facility A) the following fees in respect of each Letter of Credit issued at its request by the Applicable Lenders hereunder:

- (a) on the date of issue of each Letter of Credit and thereafter on the first day of each Fiscal Quarter until the expiry of such Letter of Credit, a fee payable in Canadian Dollars or US Dollars, as applicable, calculated by multiplying the stated amount of such Letter of Credit by the applicable LC Rate and then multiplying the result by a fraction, (i) the numerator of which is the number of days to elapse from and including the date of issue to and including the last day of the then current Fiscal Quarter and thereafter, the lesser of the number of days in the then current Fiscal Quarter and the number of days until the expiry thereof, and (ii) the denominator of which is the number of days in the calendar year in question;

- (b) on the date of each amendment of each Letter of Credit, a fee of Cdn\$100.00; and
- (c) in the case of a Letter of Credit arranged by the Agent under Facility A, a fronting fee payable to the Agent in the amount of 12.5 bps on the stated amount thereof.

If the stated amount of a Letter of Credit is reduced (either through presentment for payment or with the consent of the beneficiary thereof) or if the Letter of Credit is cancelled, the portion of such fee that has been paid by a Borrower for the remaining term of the Letter of Credit and for the amount of such reduction or cancellation shall be refunded or returned to such Borrower.

#### **4.7 Interest on Overdue Amounts**

Notwithstanding any other provision of this Agreement, in the event that any amount due hereunder (including without limitation, any interest payment) is not paid when due (whether by acceleration or otherwise), the Borrowers shall and hereby agree to pay to the Swingline Lender or the Agent for the benefit of the Lenders, as applicable, interest on such unpaid amount (including without limitation, interest on interest), if and to the fullest extent permitted by Applicable Law, from the date that such amount is due until the date that such amount is paid in full (but excluding the date of such payment if the payment is made before 10:00 a.m. at the place of payment on the date of such payment), and such interest shall accrue daily, be calculated and compounded on the last Business Day of each calendar month and be payable in the currency of the relevant Advance on demand, as well after as before maturity, default and judgment, at a rate per annum in respect of the Swingline Facility or Facility A that is equal to:

- (a) if such amount is payable in Canadian Dollars, the Prime Rate plus 5.0% per annum; or
- (b) if such amount is payable in US Dollars, the US Base Rate plus 5.0% per annum, and

at a rate per annum in respect of Facility B that is equal to the rate determined pursuant to Section 4.5 plus 2.0% per annum. Each Borrower hereby waives, to the fullest extent it may do so under Applicable Law, any provisions of Applicable Law, including specifically the *Interest Act* (Canada) or the *Judgment Interest Act* (Alberta), which may be inconsistent with this Agreement.

#### **4.8 Commitment Fees**

CCS (for and on behalf of itself and the Partnership) shall pay commitment fees to the Swingline Lender (in respect of the Swingline Facility) and to the Agent on behalf of each Applicable Lender (in respect of Facility A), calculated in arrears on the last Business Day of each Fiscal Quarter commencing with the last Business Day of the Fiscal Quarter in which the Effective Date occurs, and payable quarterly in arrears on the third Business Day of the next following Fiscal Quarter thereafter. Each payment of commitment fees shall be calculated for the period commencing on and including the Effective Date or the last date on which such commitment fees were payable hereunder, as the case may be, up to and including the last day of the Fiscal Quarter for which such commitment fees are to be paid and shall be in an amount equal to the Commitment Fee Rate in effect on each day during such period of calculation multiplied by the undrawn portion of the Swingline Commitment or the Facility A Commitment, as the case may be, for each day in the period of the calculation from the amount of such Lender's Total Commitment in effect on each such day. Such commitment fees shall be calculated on a daily basis and on the basis of a 365 day year. For purposes of calculating commitment fees payable pursuant to this Section 4.8, the amount of Advances outstanding from time to time in US Dollars on each day during the period for which such commitment fees are payable shall, for the purposes of determining an Equivalent Amount on such day, be notionally converted to the Equivalent Amount in Canadian Dollars using the Bank of Canada noon (Toronto time) spot rate for converting US Dollars to Canadian Dollars for the first Business Day of such Fiscal Quarter.

#### **4.9 Agency Fees**

The Borrowers shall pay agency fees to the Agent from time to time in accordance with an agency fee agreement entered into between the Borrowers and the Agent, and such fees shall, for purposes of this Agreement, be deemed to be Obligations under this Agreement.

#### **4.10 Amendment and Work Fees**

The Borrowers shall, on the Effective Date, pay to the Agent: (i) in respect of each new Lender which was not a lender under the Prior CCS Credit Agreement, work fees in the amount of 30 bps of its Commitment under this Agreement, and (ii) in respect of each Lender which was also a lender under the Prior CCS Credit Agreement, work fees in the amount of 10 bps of its original commitment under the Prior CCS Credit Agreement, together with additional work fees in the amount of 30 bps of its increased Commitment under this Agreement. Each Borrower hereby authorizes the Agent to debit the Borrowers' Account in respect of such fees, crediting each Lender with its portion thereof.

#### **4.11 Extension Fees**

The Borrowers shall pay to the Swingline Lender (in the case of the Swingline Facility) or to the Agent (in the case of Facility A) an extension fee to be negotiated at the time of making any Request for an Offer of Extension pursuant to Section 3.5.

#### **4.12 Maximum Rate Permitted by Law**

No interest or fee to be paid hereunder shall be paid at a rate exceeding the maximum rate permitted by Applicable Law. In the event any such interest or fee exceeds such maximum rate, such interest or fee shall be reduced or refunded, as the case may be, so as to be payable at the highest rate recoverable under Applicable Law.

#### **4.13 Interest Generally**

The theory of deemed reinvestment shall not apply to the calculation of interest or payment of fees or other amounts hereunder, notwithstanding anything contained in this Agreement or in any other Credit Document now or hereafter granted to or taken by the Lenders and all interest and fees payable by the Borrowers to any Lender shall accrue from day to day and be computed as described herein in accordance with the "nominal rate" method of interest calculation.

### **ARTICLE V SECURITY**

#### **5.1 Security**

To secure due repayment and satisfaction in full of all Obligations to the Agent, the Lenders and the Swap Lenders from time to time, including due performance, payment and satisfaction of all Obligations under this Agreement and the other Credit Documents, the Borrowers shall cause to be executed and delivered to the Agent for and on behalf of the Lenders the following:

- (a) a fixed and floating charge debenture from each Borrower and each Material Entity, in the principal amount of \$600,000,000, mortgaging and charging to and in favour of the Agent all of its present and after acquired real and personal property, to be registered in first priority position subject only to Permitted Encumbrances at the personal property or other

appropriate registry office in each applicable Relevant Jurisdiction (including specific serial numbered goods registrations against all Service Rigs);

- (b) a debenture pledge agreement from each Borrower and each Material Entity, pursuant to which it pledges its debenture to the Agent;
- (c) an unlimited guarantee from each Borrower whereby it guarantees all Obligations of each other Borrower and the Material Entities to the Agent and the Lenders;
- (d) an unlimited Subsidiary Guarantee from each Material Entity (including the Income Trust) whereby it guarantees all Obligations of the Borrowers and each other Material Entity to the Agent and the Lenders;
- (e) Section 427 *Bank Act* (Canada) security over all inventory of the Partnership and CCS;
- (f) an assignment of insurance naming the Agent as first loss payee;
- (g) the Subordination Agreement,

together with an opinion in respect of such documents from Borrowers' Counsel, all in form and substance satisfactory to the Agent and Lenders' Counsel.

## **5.2 Subsidiary Guarantees and Security**

Within 30 days of a new Subsidiary becoming a Material Entity, the Borrowers shall cause to be executed and delivered to the Agent by each such new Material Entity the documents described in Section 5.1(a), 5.1(b) and 5.1(d) above, together with such other documents, certificates and opinions as the Agent may reasonably request.

## **5.3 Continuing Guarantees and Security**

The guarantees and other Security required by Sections 5.1 and 5.2 shall for all purposes be treated as separate and continuing guarantees and security and shall be deemed to have been given in addition to and not in place of any other guarantee or any security now held or hereafter acquired by the Agent or any Lender. No item or part of any guarantee or any Security shall be merged or be deemed to have been merged in or by any simple contract debt or any judgment, and any realization of or steps taken or pursuant to any guarantee or any other Security shall be independent of and not create a merger with any other right available to the Agent or any Lender under this Agreement, any other guarantee or Security, or any other Credit Document held by it or them or at law or in equity.

## **5.4 Dealing with Guarantees**

The Agent and the Lenders may grant extensions of time or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Borrowers, the Material Entities and other persons (including other guarantors), sureties or securities as the Agent and the Lenders may in their sole discretion see fit, and the Lenders may, subject to the provisions hereof, apply all moneys received from the Borrowers, the Material Entities or other persons, or from sureties or securities, to such part of the Obligations as the Lenders may think best, all without prejudice to or in any way limiting the liability of the Borrowers and the Material Entities under any of the Credit Documents.

## **5.5 Effectiveness**

The guarantees and the Security contemplated or required to be created hereby shall be effective upon execution and delivery thereof, and the undertakings as to the guarantees and the Security herein or in any document hereunder shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such guarantees or Security, or before or after or upon the date of execution of any amendments to or restatements of this Agreement, and shall not be affected by any Obligations fluctuating from time to time.

## **5.6 Undertaking to Grant Additional Security**

Subject to Section 5.7, if the Agent requests, acting reasonably, the Borrowers shall forthwith grant or cause to be granted to the Agent, for and on behalf of the Lenders, such additional security, including a first fixed Security Interest (subject only to Permitted Encumbrances which under Applicable Law rank in priority thereto) in such Property of any Borrower or Material Entity not previously subject to a fixed Security Interest as the Agent shall determine, as security for all present and future Obligations of the Borrowers under or with respect to this Agreement and the other Credit Documents.

## **5.7 Limitation**

The rights of the Agent and the Lenders under Section 5.6 shall be subject to, where applicable, the receipt of any consents that may be required pursuant to Applicable Law prior to any Borrower or Material Entity granting a Security Interest referred to therein. The Borrowers shall use all reasonable efforts (which shall include the expenditure of funds) to obtain such consents.

## **5.8 Release and Amendment of Security**

During the term of this Agreement, the Agent shall not discharge, surrender, amend or otherwise modify any Security without the prior written consent of all of the Lenders; provided that the Agent may discharge Security provided hereunder at the discretion of the Agent with respect to any Permitted Dispositions upon the Borrowers having first certified to the Agent in writing that any such disposition is a Permitted Disposition as contemplated by this Agreement.

## **5.9 Registrations and Renewals**

Each Borrower shall, and shall cause each Material Entity to, at their sole cost and expense, do all such commercially reasonable acts, execute all such instruments and provide such further assurances as the Agent may reasonably request to ensure that the priority of the Security Interests created by all of the Security executed and delivered to the Agent as contemplated hereby is duly protected and perfected by registration, filing or recordation of such Security or a caution, caveat, security notice or other appropriate instrument at all offices where necessary or of material advantage to the protection or perfection thereof including in the Relevant Jurisdictions; and to so cooperate with the Agent and its counsel in renewing or refiling any registration, filing or recordation required hereby in order to preserve, protect and maintain the priority of such Security Interests, from time to time.

## **5.10 Permitted Encumbrances and Permitted Indebtedness**

None of the fact that:

- (a) any Borrower or Material Entity is permitted to create or suffer to exist any Permitted Encumbrance or Permitted Indebtedness;

- (b) any representation, warranty or covenant contained herein may make an exception for the existence of Permitted Encumbrances or Permitted Indebtedness; or
- (c) the Security Interests created pursuant to the Credit Documents are stated to be subject to, or are not required to rank in priority to, Permitted Encumbrances,

shall in any manner, nor in any cause or proceeding, directly or indirectly, be taken to constitute a subordination of any Security Interest created pursuant to the Credit Documents to any Permitted Encumbrance or to any other Security Interest or other obligation whatsoever, or that the Indebtedness under the Credit Documents is in any way subordinate or junior in right of payment to any Permitted Indebtedness, it being the intention of the parties that all Security Interests created pursuant to the Credit Documents shall at all times, to the maximum extent permitted by Applicable Law, rank as first priority Security Interests in priority to Permitted Encumbrances and all other Security Interests or other obligations whatsoever and that the Indebtedness under the Credit Documents will rank in right of payment at all times at least equally with such Permitted Indebtedness.

## **ARTICLE VI**

### **DISBURSEMENT CONDITIONS**

#### **6.1 Effectiveness and Conditions Precedent**

This Agreement shall become effective at such time as the following conditions precedent shall have been satisfied (or waived by all of the Lenders):

- (a) **Receipt of Documents:** the Agent shall have received for and on behalf of the Lenders, each in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably, the following:
  - (i) a copy of this Agreement duly executed and delivered by the Borrowers;
  - (ii) a copy of each other Credit Document being delivered in connection herewith (including the Security) duly executed and delivered by each Borrower or Material Entity in existence on the date hereof, as applicable;
  - (iii) a projected income statement, balance sheet and cashflow statement for the next Fiscal Year;
  - (iv) a certificate of status in respect of CCS and each corporate Material Entity issued under the laws of its jurisdiction of incorporation, amalgamation or continuance, as applicable;
  - (v) a certified copy of the Constatting Documents of each Borrower and each Material Entity, including the Trust Documents in respect of the Income Trust and the Subtrust;
  - (vi) a certified copy of the resolutions of the directors of CCS and each corporate Material Entity, or of the Administrator for and on behalf of the Income Trust, or of CCS in its capacity as trustee for and on behalf of the Subtrust, or of the General Partner for and on behalf of the Partnership, in each case with respect to the authorization, execution and delivery of the Credit Documents to which the Borrowers and Material Entities are respectively a party being delivered in connection herewith;

- (vii) a favourable opinion of Borrowers' Counsel, addressed to the Agent, each Lender and Lenders' Counsel, relating to (among other things) existence and capacity of each Borrower and each Material Entity, and the due authorization, execution, delivery and enforceability of the Credit Documents to which each Borrower and each Material Entity is a party being delivered in connection herewith;
  - (viii) a favourable opinion from Lenders' Counsel addressed to the Agent and each Lender as to such matters as may be reasonably required to be addressed by such parties; and
  - (ix) such other documents, certificates, opinions and agreements which the Agent and the Lenders may reasonably request.
- (b) **Due Diligence:** the Lenders shall have completed and be satisfied with their business, legal and environmental due diligence review in respect of the Borrowers and the Material Entities, including disclosure of all contingent obligations and guarantees.
  - (c) **Payout of Existing Indebtedness:** the Agent and the Lenders, acting reasonably, shall be satisfied that a portion of the initial Advances provided by the Lenders hereunder shall be used on the Effective Date to complete the repayment of all Indebtedness owing by CCS under the Prior CCS Credit Agreement, other than in respect of Facility B thereunder.
  - (d) **Security Interests:** all Security Interests pursuant to the Security shall have been duly perfected and registered in each applicable Relevant Jurisdiction as required by the Agent and Lender's Counsel.
  - (e) **Fees:** the Borrowers shall have paid all fees and expenses then due in respect of this Agreement.
  - (f) **Other:** satisfaction (or waiver) of the additional conditions precedent set out in Section 6.2(a).

## 6.2 Conditions Precedent to All Advances (other than Rollovers and Conversions)

The obligation of each Lender to make any Advance hereunder (including the initial Advance, but excluding Rollovers and Conversions) is subject to the satisfaction of the following conditions precedent:

- (a) **No Default:** no Default or Event of Default has occurred and is continuing on the Drawdown Date, or would result from the making of any such Advance;
- (b) **Representations and Warranties:** the representations and warranties contained in Article 7 and in any other Credit Document shall be true and correct as if made on and as of the Drawdown Date and the date of any Compliance Certificate;
- (c) **Delivery of Notice:** the Borrowers shall have delivered to the Agent a duly completed Drawdown Notice if required hereunder;
- (d) **No Material Adverse Effect:** since the date of the delivery by the Borrowers to the Agent of the most recent Compliance Certificate required pursuant to Section 8.3(c), there shall not have occurred any change, development or event relating to any Borrower or Material Entity which would have a Material Adverse Effect; and

- (e) **Other:** all other terms and conditions of this Agreement upon which the Borrowers may obtain an Advance are fulfilled, including without limitation, the aggregate amount of any proposed Advance when added to the then outstanding Indebtedness under each Facility, as applicable, shall not exceed the respective Facility Commitment.

### 6.3 Conditions Precedent to Rollovers and Conversions

The obligation of the Agent to effect a Rollover or Conversion, as applicable, is subject to the satisfaction of the following conditions precedent:

- (a) **No Default:** no Default or Event of Default has occurred and is continuing on the Rollover Date or the Conversion Date, as applicable, or would result from the making of any such Advance; and
- (b) **Delivery of Notice:** the Borrowers shall have delivered to the Agent a duly completed Rollover Notice or Conversion Notice, as applicable.

### 6.4 Waiver

The conditions in Sections 6.1, 6.2 and 6.3 are inserted for the sole benefit of the Lenders, and may be waived by the Agent upon the instructions of all of the Lenders in whole or in part (with or without terms or conditions) in respect of any particular Advance.

### 6.5 Undertaking to Deliver Documents

In the event that, as of the date hereof, the Amalgamation has not been completed and registered in Alberta with effect as of and from January 1, 2006 and the amalgamating Subsidiaries continue to be validly subsisting on the Effective Date, the Borrowers shall forthwith cause each of HAZCO, WasteWorks and 1076713 to execute and deliver, each in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably, the following:

- (a) a copy of the documents described in Section 5.1 (a), (b) and (d) duly executed by such Subsidiaries;
- (b) a certificate of status in respect of each such Subsidiary issued under the laws of the applicable Relevant Jurisdictions in which any of them carries on any material business;
- (c) a certified copy of the Constatting Documents of each such Subsidiary;
- (d) a certified copy of a directors' resolution of each such Subsidiary with respect to its authorization, execution and delivery of the Security to which it is a party being delivered in connection therewith;
- (e) a favourable opinion of Borrower's Counsel, addressed to the Agent, each Lender and Lenders' Counsel, relating to (among other things) existence and capacity of each such Subsidiary, and the due authorization, execution, delivery and enforceability of the Security to which each such Subsidiary is a party being delivered in connection therewith;
- (f) a favourable opinion from the Lenders' Counsel addressed to the Agent and each Lender as to such matters as may be reasonably required to be addressed by such parties; and
- (g) such other documents, certificates, opinions and agreements which the Agent and the Lenders may reasonably request.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and Warranties**

Each Borrower represents and warrants to the Agent and the Lenders (all of which representations and warranties the Borrowers hereby acknowledge are being relied upon by the Agent and the Lenders in entering into this Agreement) that:

- (a) **Existence of the Income Trust:** the Income Trust is an unincorporated trust duly settled under the laws of Alberta and duly qualifies as a "unit trust" and as a "mutual fund trust" under the provisions of subsections 108(2) and 132(6) of the *Income Tax Act* (Canada), and, as at the date hereof, Computershare is the duly appointed trustee of the Income Trust;
- (b) **Existence of the Subtrust:** the Subtrust is an unincorporated commercial trust duly settled under the laws of Alberta, and, as at the date hereof, CCS is the duly appointed trustee of the Subtrust;
- (c) **Existence of the Partnership:** the Partnership is a limited partnership duly formed and recognized, and validly subsisting and in good standing under the laws of Alberta, and is duly registered and qualified as an extra-provincial limited partnership under the laws of each other jurisdiction in Canada in which the nature of any business transacted by it or the character of any Property owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification does not have a Material Adverse Effect; as of the date hereof, OpCo is the General Partner of the Partnership and the Subtrust is the sole limited partner of the Partnership;
- (d) **Existence of Other Entities:** CCS and each corporate Material Entity is duly incorporated, amalgamated or continued, and each Material Entity which is a partnership is duly formed and recognized, and each is duly organized, validly subsisting and in good standing under the laws of its jurisdiction of incorporation, amalgamation, continuance or formation, as the case may be, and each is duly registered and qualified as an extra-provincial corporation or partnership under the laws of each other jurisdiction in Canada in which the nature of any business transacted by it or the character of any Property owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification does not have a Material Adverse Effect;
- (e) **Existence of Hardisty LP:** Hardisty LP is a limited partnership duly formed and organized under the laws of Alberta for the purpose of the Hardisty Project, of which CCS and Enbridge Pipelines (Athabasca) Inc. are its limited partners (each as to a 49.95% interest as of the date hereof), and Hardisty Caverns Ltd. (as to a 0.1% interest) is its general partner;
- (f) **Power and Capacity:** each Borrower and Material Entity has full corporate, partnership or trust power and capacity, as the case may be, to own its Property and conduct its business as presently conducted, and to grant security over its Property; and in the case of each Borrower, to borrow money and perform its obligations hereunder, and in the case of CCS, to act as the duly authorized Administrator of the Income Trust and the trustee of the Subtrust; and in the case of OpCo, to act as the General Partner of the Partnership; in each case, pursuant to the delegation or appointment provisions of the Trust Documents or the Partnership Agreement, respectively;
- (g) **Authorization:** the execution, delivery and performance by any Borrower or Material Entity of the Credit Documents to which it is a party has been duly authorized by all necessary

corporate, partnership or trust action, as applicable, and are within its corporate, partnership or trust power and capacity, as applicable;

- (h) **Execution:** each Credit Document to which any Borrower or Material Entity is a party has been duly executed and delivered by such Borrower or Material Entity, as applicable;
- (i) **Binding Obligations:** each Credit Document to which any Borrower or Material Entity is a party is a legal, valid and binding obligation enforceable against such Borrower or Material Entity, as the case may be, in accordance with its respective terms, except as enforceability may be limited by general principles of equity and by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;
- (j) **No Legal Bar or Resultant Lien:** the execution, delivery and performance by any Borrower or Material Entity of the Credit Documents to which it is a party will not violate any provision of Applicable Law or of its respective Constating Documents, and will not result in a breach of or constitute a default or require any consent under, or result in the creation of any Security Interest (other than Permitted Encumbrances) upon, any of its Property pursuant to any indenture or other agreement or instrument to which it is a party or by which it or its Property may be bound or affected; and the execution, delivery and performance by any Borrower or Material Entity of the Credit Documents to which it is a party does not require any governmental action, license, consent or approval of, or notice to or filing with, any Governmental Authority which has not been obtained and does not and will not contravene any provision of Applicable Law or any governmental action applicable to such Borrower or Material Entity, or any of its Property;
- (k) **Title to Property:** subject to Permitted Title Defects, each Borrower or Material Entity has good and marketable title to all of its Property free and clear of all claims and Security Interests, other than Permitted Encumbrances;
- (l) **Default of Other Contracts:** no Borrower or Material Entity is in material breach or material default of, nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a breach or default under any material agreement or instrument by which it or any of its Property is bound, except to the extent any failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (m) **Ownership of CCS Shares:** except for the Exchangeable Shares, the Income Trust is, directly or indirectly, the legal and beneficial owner of all of the Shares in the capital of CCS;
- (n) **Ownership of Subtrust Trust Units:** as of the date hereof, the Income Trust is the legal and beneficial owner of all of the Subtrust Trust Units;
- (o) **Ownership of Partnership Units:** as of the date hereof, the Subtrust is the legal and beneficial owner of all of the limited partnership units of the Partnership;
- (p) **Litigation:** there are no material actions, suits or proceedings (whether or not purportedly on behalf of any Borrower or Material Entity) pending or threatened against any Borrower or Material Entity at law or in equity by or before any court, arbitrator or other Governmental Authority, domestic or foreign, of any kind, and no Borrower or Material Entity is in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or other Governmental Authority, domestic or foreign, of any kind, except in each case to the extent it would not reasonably be expected to have a Material Adverse Effect;

- (q) **Property Information:** all cash flow projections and other data provided to the Agent by the Borrowers in respect of the Property of the Borrowers and the Material Entities fairly and properly reflects in all material respects the interests of the Borrowers and the Material Entities therein and thereto as of the date thereof, net of all royalties and other burdens affecting same;
- (r) **Financial Condition:** all Financial Statements submitted to the Agent fairly reflect, as of the dates thereof, the consolidated financial condition of the Income Trust and the results of operations for the periods covered thereby, have been prepared in accordance with GAAP and, from the date of the latest such Financial Statements submitted to the Agent, there has been no material adverse change in the consolidated financial condition of the Income Trust which has not been disclosed in writing to the Agent;
- (s) **Assets:** the assets of the Borrowers and the Material Entities (other than the Income Trust) represent not less than ninety-five percent (95%) of the consolidated assets of the Income Trust;
- (t) **Swaps:** as of the date hereof, no Borrower or Material Entity is a party to any Swaps other than Eligible Swaps or Permitted Swaps;
- (u) **Material Entities:** as of the date hereof, the Income Trust has no Material Entities other than the Subtrust, OpCo, CavernCo and 1206525;
- (v) **Other Subsidiaries:** as of the date hereof, the Income Trust has no wholly-owned Subsidiaries which are not Borrowers or Material Entities, other than HAZCO Environmental Services Del Peru S.A.;
- (w) **Taxes:** each Borrower and Material Entity has filed all tax returns which were required to be filed, have paid or made provision for payment (in accordance with GAAP) of all Taxes which are due and payable, and have provided adequate reserves (in accordance with GAAP) for the payment of any Taxes, the payment of which is being contested, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (x) **Insurance:** each Borrower and Material Entity has in full force and effect such policies of insurance in such amounts issued by insurers of recognized standing insuring its Property and operations, and providing such coverage as would be maintained by a prudent operator engaged in the same or similar business in the Relevant Jurisdictions where its Property and operations are located, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (y) **Compliance with Laws:** each Borrower and Material Entity is in material compliance with all Applicable Law, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect;
- (z) **Environmental Laws:** each Borrower and Material Entity has obtained all material permits, licenses and other authorizations which are required under Environmental Law, except to the extent any failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (aa) **Environmental Condition of Property:** no Property of any Borrower or Material Entity:
  - (i) is the subject of any material outstanding orders from a Governmental Authority or otherwise alleging violation of any Environmental Law; and

- (ii) does not comply, with respect to its use and condition and in all material respects, with Environmental Law and all terms and conditions of all permits, licenses and other authorizations which are required under Environmental Law, except to the extent that any failure to not comply would not reasonably be expected to have a Material Adverse Effect;
- (bb) **Events of Default:** no event or circumstance has occurred which constitutes, or which with the giving of notice, lapse of time or both would constitute, an Event of Default; and
- (cc) **Disclosure:** there is no fact that it has not disclosed to the Lenders in writing that could reasonably be expected to have a Material Adverse Effect.

## 7.2 Survival of Representations and Warranties

Unless expressly stated to be made as of a specific date, the representations and warranties made in this Agreement shall survive the execution of this Agreement and all other Credit Documents, and shall be deemed to be repeated as of the date of each Advance (but not including any deemed Advance) and as of the date of delivery of each Compliance Certificate, subject to modifications made by the Borrowers to the Lenders in writing and accepted by the Lenders. Each Lender shall be deemed to have relied upon such representations and warranties at each such time as a condition of making an Advance hereunder or continuing to extend the Facilities hereunder.

## **ARTICLE VIII COVENANTS**

### 8.1 General Covenants

Each Borrower covenants and agrees with the Agent and the Lenders that, during the term of this Agreement, unless the Agent acting on the instructions of the Majority Lenders (each to be acting reasonably) otherwise provides its prior written consent, it shall and shall cause each other Borrower and each Material Entity, as applicable, to:

- (a) **Maintain Existence:** other than as contemplated by the Amalgamation, maintain and preserve its existence, organization and status in each jurisdiction of organization and in each other Relevant Jurisdiction, and make all corporate and other filings and registrations necessary or advisable in connection therewith except to the extent failure to make such filings would not have a Material Adverse Effect;
- (b) **Conduct Business:** carry on and continuously conduct its business in an efficient, diligent and businesslike manner and in accordance with good oilfield industry practice;
- (c) **Comply With Laws:** obtain, as and when required, and maintain in good standing all permits and approvals necessary to the ownership of its Property and to the conduct of its business in each Relevant Jurisdiction, and operate its business in substantial compliance with and comply with all Applicable Law (including Environmental Law) and material contracts which, if not obtained, maintained, operated in compliance with or complied with would reasonably be expected to have a Material Adverse Effect;
- (d) **Pay Taxes:** duly file on a timely basis all Tax returns required to be filed by it, and duly and punctually pay all Taxes levied or assessed against it or its Property (except for those Taxes which are due but are being contested diligently in good faith by appropriate proceedings), except to the extent failure to do so would not have a Material Adverse Effect;

- (e) **Provide Access**: upon reasonable notice, permit any representative of the Agent and the Lenders to discuss with its senior management its business, material Property, financial condition and prospects;
- (f) **Pay Indebtedness**: duly and punctually pay all Indebtedness owing to the Agent and the Lenders hereunder on the dates, times and places, and in the manner specified herein;
- (g) **Use Advances**: use the proceeds of any Advance hereunder only for the purposes set out in Sections 2.2 or 2.3, respectively;
- (h) **Deliver Security**: execute and deliver to the Agent the Security required by Section 5.1, and upon any new Subsidiary becoming a Material Entity, as and when required by Section 5.2;
- (i) **Maintain Effectiveness of Security**: ensure that the Security granted by it to the Agent remains legal, valid, binding and enforceable, in accordance with its respective terms (subject to Applicable Law affecting the rights of creditors generally and rules of equity of general application);
- (j) **Co-Operate**: co-operate with the Agent so as to permit the Agent to:
  - (i) forthwith register, file and record the Security (or notices, financing statements or other registrations, including amending registrations, in respect thereof) in accordance with the terms hereof in all proper offices where such registration, filing or recording may be necessary or advantageous to perfect or protect the Security Interests constituted by the Security; and
  - (ii) maintain all such registrations in full force and effect;
- (k) **Maintain Intercorporate Relations**: for so long as there remains any Obligations of the Borrowers owing to the Agent or any Lender under the Facilities, ensure that, with the exception of the Exchangeable Shares, each Borrower and Material Entity remains a direct or indirect wholly-owned Subsidiary of the Income Trust;
- (l) **Give Notice**: promptly give written notice to the Agent of:
  - (i) any Default or Event of Default of which it becomes aware, using reasonable diligence,
  - (ii) any material amendment to its method of financial reporting, together with full particulars thereof, the reasons therefore and effect thereof,
  - (iii) any damage to or destruction of any Property which might give rise to a claim for insurance monies in excess of \$5,000,000,
  - (iv) any proposed change in its name, at least 20 days prior to any action being taken to effect such name change, and thereafter within 10 days provide certified copies of the certificate and supporting documents effecting such name change;
  - (v) any proposed change in the location of its chief executive office from the province in which it is currently located, at least 20 days prior to any action being taken to effect such location change together with particulars of the new address;

- (vi) any proposed movement of a Service Rig to other than a Relevant Jurisdiction, at least 20 days prior to any such movement or relocation;
- (vii) any proposed change in the ownership of Hardisty LP which would have the effect of CCS increasing or decreasing its ownership interest by 5% or more, or any proposed material change to the Hardisty Project, at least 10 days prior to any such change;
- (viii) any Environmental Liability occurring on or in relation to its Property, or the receipt of any order from a Governmental Authority or otherwise alleging violation of any Environmental Law, which could reasonably be expected to have a Material Adverse Effect, including without limitation, the existence of any Hazardous Materials located on, above or below the surface of any land which it controls or contained in the soil or water constituting such land, and any Release of Hazardous Materials that has occurred on or from such land (except those Hazardous Materials being stored, used or otherwise handled in the ordinary course of business in substantial compliance with Applicable Law),
- (ix) any litigation, arbitration or other proceeding commenced or threatened against or affecting it which could reasonably be expected to have a Material Adverse Effect,
- (x) any other change (financial or otherwise) in the business, affairs, operations, assets, liabilities (contingent or otherwise) or capital of any Borrower or Material Entity that has or could reasonably be expected to have a Material Adverse Effect,

and from time to time provide the Agent with all reasonable information requested by the Agent concerning the status of any of the foregoing;

- (m) **Give Notice re CCS and OpCo:** promptly give written notice to the Agent in connection with the proposed termination, cancellation or non-renewal of (i) CCS in its capacity as the Administrator of the Income Trust, or as the trustee of the Subtrust, or (ii) of OpCo in its capacity as the General Partner of the Partnership; and
- (n) **Provide Documents:** use reasonable efforts to provide the Agent from time to time with such other documents, security, opinions, consents, acknowledgments and agreements as are requested by the Agent or the Lenders and are reasonably necessary to implement this Agreement and the Security.

## 8.2 Financial Covenants

**[THIS SECTION INTENTIONALLY DELETED PURSUANT TO SECTION 12.2(2) OF NATIONAL INSTRUMENT 51-102 OF THE CANADIAN SECURITIES ADMINISTRATORS.]**

## 8.3 Reporting Requirements

During the term of this Agreement, unless the Agent acting on the instructions of the Majority Lenders (each to be acting reasonably) otherwise provides its prior written consent, the Borrowers shall:

- (a) cause to be prepared and delivered to the Agent as soon as practicable, and in any event within 45 days of the end of each Fiscal Quarter (including the fourth quarter), the interim unaudited consolidated Financial Statements of the Income Trust, in each case as at the end of each such Fiscal Quarter;

- (b) cause to be prepared and delivered to the Agent as soon as practicable, and in any event within 90 days after the end of each Fiscal Year, the annual audited consolidated Financial Statements of the Income Trust, such Financial Statements to be audited by an internationally recognized accounting firm and to be prepared in accordance with GAAP on a consolidated basis;
- (c) concurrently with the delivery of its Financial Statements referred to in (a) and (b) above provide the Agent with a Compliance Certificate, together with (i) details of the calculations of all ratios, (ii) notification of any completed Acquisitions or single capital expenditures which represent more than fifteen percent (15%) of Net Tangible Fixed Assets, on a consolidated basis, and (iii) details of any transaction that results in an amalgamation, merger or consolidation of any Borrower or Material Entity;
- (d) within 120 days after the end of each Fiscal Year, provide the Agent with an annual business plan for the ensuing year, including financial projections, capital expenditure budget (specifically segregating capital expenditures attributed to maintenance and growth and indicating source of funding) and assumptions. For greater certainty, the capital expenditure budget shall include all planned expenditures and Acquisitions;
- (e) within 90 days after the end of each Fiscal Year, provide the Agent with a copy of the summary of its most recent internally conducted environmental and regulatory audits completed pursuant to the Borrowers' environmental management system;
- (f) upon the request of the Agent from time to time, provide a detailed report describing the terms and provisions of each Swap entered into by any Borrower or Material Entity; and
- (g) promptly provide the Agent with such other information from time to time as the Agent may reasonably request respecting any Borrower or Material Entity.

#### **8.4 Property**

Each Borrower covenants and agrees with the Agent and the Lenders that, during the term of this Agreement, unless the Agent acting on the instructions of the Majority Lenders (each to be acting reasonably) otherwise provides its prior written consent, it shall and shall cause each other Borrower and each Material Entity, as applicable, to:

- (a) defend its Property against any person claiming or attempting to claim the same, or asserting any interest adverse to its interests therein, and keep at an appropriate office accurate and complete records of its Property;
- (b) subject to normal safety precautions of the operators of same, upon reasonable notice, permit any representatives of the Agent to visit and inspect its Property during ordinary business hours, and furnish the Agent with any information thereon reasonably requested by the Agent from time to time as may be available to it;
- (c) maintain, protect and preserve its Property which it operates in accordance with good oilfield practice and take reasonable steps to cause the operator(s) of its Property which it does not operate to do likewise, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;
- (d) comply in all material respects with Applicable Law, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect;

- (e) where the Agent reasonably believes that any Borrower or Material Entity is in breach of any Environmental Law and that the result of such breach would have a Material Adverse Effect, permit, or if it is not the operator seek the permission of the operator to permit, properly qualified representatives of such Borrower or Material Entity, or the Agent (at the option of the Agent), to conduct tests, inspections and appraisals of or on the subject Property, including environmental audits and soil tests, and to remove soil and other samples from the subject Property from time to time to determine whether there is a breach of Environmental Law which would have a Material Adverse Effect, provided that the results of any such tests shall also be delivered to the Borrowers, and the Borrowers shall be responsible for the costs thereof;
- (f) pay or cause to be paid all rents, royalties and other obligations to pay money validly imposed upon it, or upon its Property or any part thereof, as and when the same become due and payable or provide adequate reserves (in accordance with GAAP) for payment of any such obligations, the payment of which is being contested in good faith by appropriate proceedings, except in each case to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect; and
- (g) maintain insurance on all its Property with financially sound and reputable insurance companies or associations including all-risk property insurance, comprehensive general liability insurance, in amounts and against risks that are determined to be appropriate by the Borrowers acting prudently, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect, and furnish to the Agent, upon written request but in any event annually, satisfactory evidence of the insurance carried.

## **8.5 Negative Corporate Covenants**

So long as any Obligations remain outstanding or any Commitment remains in effect, without the prior written consent of all of the Lenders (each to be acting reasonably), each Borrower shall not and shall not permit any other Borrower or Material Entity, as applicable, to:

- (a)
  - (i) merge, amalgamate or consolidate with any person or persons other than a Borrower or a Material Entity, or
  - (ii) enter into any corporate reorganization or other transaction intended to effect a consolidation, amalgamation or merger, or
  - (iii) become party to any transaction whereby directly or indirectly all or any substantial part of its Property would become the property of any person other than a Borrower or a Material Entity, whether by way of reorganization, dissolution, winding-up, liquidation, amalgamation, arrangement, transfer, lease or otherwise,
 if, in any such case, there would be an adverse impact on the perfection or priority of the Security; or
- (b) change in any material respect the nature of its business or operations, or engage directly or indirectly in any material business activity or purchase or otherwise acquire any material property, in either case, that could reasonably be expected to have a Material Adverse Effect.

## **8.6 Restrictions on Additional Debt, Guarantees, Security and Swaps**

So long as any Obligations remain outstanding or any Commitment remains in effect, without the prior written consent of the Agent upon the instructions of the Majority Lenders (each to be acting

reasonably), each Borrower shall not and shall not permit any other Borrower or Material Entity, as applicable, to:

- (a) create, incur, assume or permit to exist any Debt, other than Debt secured by Permitted Encumbrances and Permitted Indebtedness;
- (b) provide any guarantee, loans or other financial assistance to any person other than (i) to the Agent and the Lenders, a Borrower or a Material Entity, or (ii) to a Subsidiary of the Income Trust (other than a Borrower or a Material Entity) in an aggregate amount not exceeding five percent (5%) of the consolidated total assets of the Income Trust;
- (c) create, assume, suffer to exist or otherwise have outstanding any Security Interest on any Property except for Permitted Encumbrances; or
- (d) enter into or otherwise become a party to or obligated under any Swap or other similar agreement ordinarily used for the purpose of hedging currency risk, interest rate risk or commodity risk, unless such Swap or other agreement is entered into by any Borrower or Material Entity in the ordinary course of business and for the purpose of managing any such risk and not for speculative purposes (determined, where relevant, by reference to GAAP); provided, for greater certainty, that no consent of the Agent will be required for any such Swap which is an Eligible Swap or a Permitted Swap.

#### **8.7 Restrictions on Acquisitions**

Without the prior written consent of the Agent upon the instructions of the Majority Lenders (each to be acting reasonably), each Borrower shall not and shall not permit any other Borrower or Material Entity, as applicable, to incur any expenditures for an Acquisition or a single capital expenditure which:

- (a) for a contemplated Canadian Acquisition or single capital expenditure, would represent more than twenty percent (20%) of Net Tangible Fixed Assets, or
- (b) for a contemplated Acquisition or single capital expenditure outside Canada, would represent more than five percent (5%) of Net Tangible Fixed Assets,

as measured at the end of the most recently completed Fiscal Quarter, after having given effect to such Acquisition or expenditure; provided that the completion of such Acquisition or expenditure will not result, or reasonably be expected to result, in a Default or Event of Default; and provided further that in respect of each such Acquisition or expenditure which exceeds the thresholds in Section 8.7(a) or (b) above, the Borrowers' request for approval shall be accompanied by a minimum of three (3) years of historical financial statements for the target entity (if applicable) in a format acceptable to the Lenders, and by proforma financial projections showing pre and post compliance.

#### **8.8 Restrictions on Distributions**

Without the prior written consent of the Agent upon the instructions of the Majority Lenders (each to be acting reasonably), each Borrower shall not and shall not permit any other Borrower or Material Entity, as applicable, to declare, pay or make any Distribution; provided that, notwithstanding the foregoing, (i) Distributions made by the Income Trust shall be permitted and Distributions made directly or indirectly by a Borrower or a Material Entity to any other Borrower or Material Entity shall be permitted, subject in all cases to compliance with Section 8.2 on a pre-payment and post-payment basis, and (ii) Distributions made directly or indirectly by a Borrower or a Material Entity to a Subsidiary (other than the other Borrower or a Material Entity) shall be permitted unless aggregate Distributions to all such Subsidiaries for the then proceeding consecutive twelve month period exceeds or would thereafter exceed an amount equal to five percent (5%) of

the consolidated total assets of the Income Trust, unless a Default or Event of Default shall have occurred or shall occur as a result of making any such Distributions.

### **8.9 Restrictions on Property Dispositions**

Without the prior written consent of the Agent upon the instructions of all Lenders (each to be acting reasonably), each Borrower shall not and shall not permit any other Borrower or Material Entity, as applicable, to effect a proposed sale, transfer, assignment, abandonment, surrender, exchange, conveyance or other disposition of any Property, other than Permitted Dispositions, unless the net proceeds of disposition thereof are (i) used to permanently repay Obligations under Facility A, except where such proceeds are reinvested by the Borrowers in similar capital assets within 90 days of the making of any such dispositions, and (ii) paid to the Agent upon receipt and held by the Agent in a segregated account designated for such purpose pending such reinvestment or repayment by the Borrowers; provided that upon the expiration of such 90 day period all net proceeds not so reinvested by the Borrowers shall forthwith be used by the Agent to permanently repay Obligations under Facility A and, if the Facility B Lenders should so elect pursuant to Section 3.8, Obligations under Facility B, on a Proportionate Share basis and concurrently with each such repayment, each Applicable Lender's Commitment under the Facilities shall automatically be reduced by its Proportionate Share of each such repayment.

The particulars of all dispositions, including without limitation the nature of the Property disposed of, the value attributed thereto, and the running aggregate fair market value of all dispositions made in the current Fiscal Year, and the particulars of all reinvestments by the Borrowers for the past Fiscal Quarter, shall be certified by the Borrowers in each Compliance Certificate.

### **8.10 Hardisty Project**

Notwithstanding any other provision of this Agreement, the Borrowers shall be permitted to make direct or indirect investments in Hardisty LP, solely for its proportionate share of obligations in respect of the Hardisty Project, in the forms of loans, advances or capital contributions unless, at the time of and after giving effect to such investments, a Default or Event of Default has occurred and is continuing or would occur as a consequence of such investment. CCS covenants and agrees that it will not vote its shareholder interests in CavernCo nor its limited partnership units in respect of Hardisty LP in a manner which would violate Sections 8.5 or 8.6(a), 8.6(b) or 8.6(c) as if Hardisty LP was a Material Entity.

## **ARTICLE IX DEFAULT**

### **9.1 Events of Default**

Each of the following events shall constitute an "**Event of Default**" under this Agreement:

- (a) if a Borrower fails to pay any amount of principal when the same becomes due and payable hereunder, whether at maturity or otherwise, or a Borrower fails to pay any amount of interest, fees, Make-Whole Amounts or other Obligations within two (2) Business Days after the same becomes due and payable hereunder; or
- (b) if any Borrower or Material Entity fails to observe or perform any covenant or obligation contained herein or in any other Credit Document in any material respect (not otherwise specifically dealt with in this Section 9.1) and such breach or omission shall continue unremedied for more than ten (10) Business Days after the earlier of a Responsible Officer first having knowledge of such breach or omission, or any such Borrower or Material Entity receiving notice from the Agent of such breach or omission; or

- (c) if any Borrower or Material Entity makes any representation or warranty under any of the Credit Documents which is incorrect or incomplete in any material respect when made or deemed to be made and (i) the incorrect or incomplete representation or warranty is not capable of being remedied by such Borrower or Material Entity, or (ii) if the matter is capable of being remedied by such Borrower or Material Entity, the same shall continue unremedied for more than ten (10) Business Days after the earlier of a Responsible Officer first having knowledge of such incorrect or misleading representation or warranty, or any such Borrower or Material Entity receiving written notice from the Agent of such incorrect or misleading representation or warranty; or
- (d) if any event or circumstance (including non-payment) shall occur under any agreement or instrument relating to Indebtedness of any Borrower or Material Entity (other than Debt owing to the other Borrower or any Material Entity), including without limitation, any Swap Demand for Repayment by a Swap Lender, which would permit a person to declare (whether immediately or with lapse of time or both) an amount in excess of \$20,000,000 or the Equivalent Amount in other currencies to become due prior to the stipulated date for repayment thereof, or maturity (or in the case of Debt payable on demand or a guarantee if any demand is made at all), and such circumstance shall continue unremedied for more than ten (10) Business Days (provided that such grace period shall cease to apply if a demand has been made and any applicable grace period has expired or if the default is not being contested in good faith in appropriate proceedings); or
- (e) if any Borrower or Material Entity shall:
  - (i) become insolvent, or generally not pay its debts or meet its liabilities as the same become due, or suspends or threatens to suspend the conduct of its business, or admit in writing its inability to pay its debts generally, or declare any general moratorium on payment of its indebtedness or interest thereon, or propose a compromise or arrangement between it and any of its creditors;
  - (ii) make an assignment of its Property for the general benefit of its creditors whether or not under the *Bankruptcy and Insolvency Act* (Canada), or make a proposal (or file a notice of its intention to do so) whether or not under such Act;
  - (iii) institute any proceeding seeking to adjudicate it an insolvent, or seeking compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any other statute, rule or regulation relating to bankruptcy, winding-up, insolvency, administration, plans of arrangement, relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable *Business Corporations Act* or *Company Act*);
  - (iv) apply for the appointment of, or the taking of possession by, a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or any material part of its Property; or
  - (v) take any overt action to approve, consent to or authorize any of the actions described in this paragraph (e) or in paragraph (f) below; or
- (f) if any petition shall be filed, application be made or other proceeding be instituted by a third party against or in respect of any Borrower or Material Entity:

- (i) seeking to adjudicate it an insolvent, or a declaration that an act of bankruptcy has occurred;
- (ii) seeking a receiving order against it including under the *Bankruptcy and Insolvency Act* (Canada);
- (iii) seeking liquidation, dissolution, winding-up, reorganization, administration, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any statute, rule or regulation relating to bankruptcy, winding-up, insolvency, administration, plans of arrangement, relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable *Business Corporations Act* or *Company Act*); or
- (iv) seeking the entry of an order for relief or the appointment of a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or any material part of its Property,

and such petition, application or proceeding shall continue undismissed, or unstayed and in effect, for a period of ten (10) Business Days after the institution thereof, provided that if an order, decree or judgment which is not stayed has been granted (whether or not entered or subject to appeal) against any such Borrower or Material Entity thereunder in the interim, such grace period shall cease to apply; or

- (g) if any Property of any Borrower or Material Entity having a fair market value in excess of \$20,000,000 shall be seized (including by way of execution, attachment, garnishment or distraint) or any Security Interest thereon shall be enforced, or such Property shall become subject to any receivership, or any charging order or equitable execution of a court, or any writ of enforcement, writ of execution or distress warrant with respect to obligations in excess of \$20,000,000 shall exist in respect of any such Borrower or Material Entity or such Property, or any receiver, sheriff, civil enforcement agent or other person shall become lawfully entitled to seize or distraint upon any such Property under the *Civil Enforcement Act* (Alberta), the *Workers' Compensation Act* (Alberta), the *Personal Property Security Act* (Alberta) or any other Applicable Law whereunder similar remedies are provided, and in any case such seizure, execution, attachment, garnishment, distraint, receivership, charging order or equitable execution, or other seizure or right, shall continue in effect and not released or discharged for more than ten (10) Business Days; or
- (h) if one or more judgments for the payment of money in the aggregate in excess of \$20,000,000 (or the Equivalent Amount in other currencies) from time to time, and not substantially covered by insurance, shall be rendered by a court of competent jurisdiction against any Borrower or Material Entity and such Borrower or Material Entity shall not have (i) provided for its discharge in accordance with its terms within ten (10) Business Days from the date of entry thereof, or (ii) procured a stay of execution thereof within ten (10) Business Days from the date of entry thereof and within such period, or such longer period during which execution of such judgment shall have been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal; or
- (i) if any Borrower or Material Entity denies, to any material extent, its obligations under the Credit Documents or claims any of the Credit Documents to be invalid or withdrawn in whole or in part; or if any of the Credit Documents or any material provision thereof

becomes unlawful or is changed by virtue of legislation or by a court, statutory board or commission; or

- (j) there is, in the opinion of the Agent or the Lenders, acting reasonably, any other event which has not been approved by the Lenders in writing and which could reasonably be expected to have a Material Adverse Effect; or
- (k) if there occurs a Change of Control in respect of the Income Trust or CCS and the Lenders have not consented to such Change of Control. In this Section 9.1, "**Change of Control**" means the occurrence of any of the following events:
  - (i) a person or group of persons (other than the trustee of the Income Trust), acting jointly or in concert, acquires, directly or indirectly (other than by way of security for a *bona fide* debt), Shares of CCS to which are attached more than 20% of the votes that may be cast to elect the directors of CCS;
  - (ii) a person or group of persons, acting jointly or in concert, acquires, directly or indirectly (other than by way of security for a *bona fide* debt), a sufficient number of Income Trust Units that the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of CCS; or
  - (iii) either of the Income Trust or CCS amalgamates or otherwise merges its business and Property with or into any other person if that amalgamation or merger is not otherwise permitted by the other provisions of this Agreement.

The foregoing provisions of Section 9.1(e) and (f) shall be deemed to apply to Hardisty LP as if Hardisty LP was a Material Entity on the Effective Date, *mutatis mutandis*.

## **9.2 Acceleration, Demand and Termination of Rights**

Upon the occurrence of any Event of Default which has not been remedied or waived, no Lender shall be under any further obligation to make Advances or to accept drafts or bills of exchange as Bankers' Acceptances, and the Swingline Lender (in the case of the Swingline Facility) or the Agent (in the case of any Facility other than the Swingline Facility) may give notice to the Borrowers declaring all or any of the Obligations to be forthwith due and payable, whereupon they shall become and be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrowers.

## **9.3 Payment of Bankers' Acceptances and Letters of Credit**

Immediately upon the making of a declaration by the Agent or the Swingline Lender referred to in Section 9.2, the Borrowers shall, without necessity of further act or evidence, be and become thereby unconditionally obligated to provide forthwith to the Agent or the Swingline Lender, as the case may be, for the Applicable Lenders' benefit cash collateral equal to the full principal amount at maturity of all Bankers' Acceptances, Notional Bankers' Acceptances and Letters of Credit then outstanding and issued by each Lender, and each Borrower hereby unconditionally promises and agrees to deposit with the Swingline Lender or the Agent, as the case may be, immediately upon such demand cash collateral in the amount so demanded. Each Borrower authorizes the Swingline Lender or the Agent, as the case may be, to debit its account with the amount required to pay such Bankers' Acceptances, and the amount required to pay any drawings under Letters of Credit, notwithstanding that such Bankers' Acceptances and Notional Bankers' Acceptances may be held by a Lender in its own right at maturity. Amounts paid to the Agent pursuant to such a demand in respect of Bankers' Acceptances or Notional Bankers' Acceptances shall be applied against, and in respect of a demand by the Agent shall reduce, *pro rata* among the BA Lenders and the Non BA Lenders, the obligation

of the Borrowers to pay amounts then or thereafter payable under such Bankers' Acceptances or Notional Bankers' Acceptances accepted or issued under Facility A at the times amounts become payable under or in respect thereof, as the case may be. Amounts paid to the Swingline Lender in respect of a demand by the Swingline Lender only shall be applied against and shall reduce the obligation of the Borrowers to pay amounts then or thereafter payable under Bankers' Acceptances and Letters of Credit accepted or issued under the Swingline Facility at the times amounts become payable under or in respect thereof, as the case may be.

#### **9.4 Remedies**

Upon the making of a declaration contemplated by Section 9.2 or a demand as contemplated by Section 9.3, the Security shall become immediately enforceable and the Lenders may direct the Agent to take such action or proceedings as the Lenders in their sole discretion deem expedient to enforce the same (such direction is herein referred to as an "**Enforcement Notice**"), all without any additional notice, presentment, demand, protest or other formality, all of which are hereby expressly waived by the Borrowers. Provided, however, if a declaration contemplated by Section 9.2 is made by the Swingline Lender only, the Swingline Lender may take such actions or proceedings or instruct the Agent to take such actions or proceedings on behalf of the Swingline Lender as the Swingline Lender in its sole discretion deems expedient to enforce the rights and remedies available to it under or in respect of the Credit Documents, all without any additional notice, presentment, demand, protest or other formality, all of which are hereby expressly waived by the Borrowers.

#### **9.5 Waivers**

Subject to Section 10.7(c), the Majority Lenders may from time to time waive an Event of Default, absolutely or for a limited time and subject to such terms and conditions as such Majority Lenders may specify. No such waiver shall be construed to extend to the occurrence of any other Event of Default. Any such waiver may be given prospectively or retrospectively. No failure of the Agent or the Lenders to exercise, or delay by the Agent or the Lenders in exercising, any of their rights or remedies shall be construed as a waiver of any Event of Default.

#### **9.6 Saving**

None of the Lenders or the Agent shall be under any obligation to the Borrowers or any other person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. None of the Lenders or the Agent shall be responsible or liable to the Borrowers or any other person for any loss or damage upon the realization or enforcement of the Security, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that the Lenders or the Agent will be responsible or liable for any loss or damage arising from the willful misconduct or gross negligence of the Lenders or the Agent.

#### **9.7 Perform Obligations**

If an Event of Default has occurred and is continuing and if any Borrower has failed to perform any of its covenants or agreements in the Credit Documents, the Lenders and/or the Agent may, on notice to the Borrowers, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the Lenders without thereby waiving any rights to enforce the Credit Documents. The reasonable expenses (including any legal costs) paid by the Lenders and/or the Agent in respect of the foregoing shall be added to and become part of the Obligations and shall be secured by the Security.

## **9.8 Third Parties**

No person dealing with a Lender, the Agent or any agent of a Lender shall be concerned to inquire whether the Security has become enforceable, or whether the powers which such Lender or the Agent is purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other disposition or any other dealing with the collateral charged by such Security or any part thereof.

## **9.9 Remedies Cumulative**

The rights and remedies of the Lenders and the Agent under the Credit Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by Applicable Law. Any single or partial exercise by the Lenders or the Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect, or prejudice any other right or remedy or other rights or remedies to which the Lenders or the Agent may be lawfully entitled for the same default or breach. Any waiver by the Lenders or the Agent of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained, and any indulgence granted by the Lenders or the Agent shall be deemed not to be a waiver of any subsequent default.

## **9.10 Notices of Events of Default**

Each Lender agrees to promptly notify the Agent and the other Lenders of the occurrence of any Event of Default that it from time to time has actual notice of.

# **ARTICLE X** **THE AGENT**

## **10.1 Authority of Agent and Relationship with Lenders**

Each Lender hereby appoints TD as administration agent and TD hereby accepts such appointment. The appointment may only be terminated as expressly provided in this Agreement. Each Lender hereby authorizes the Agent to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and the other Credit Documents, together with all powers reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, the Agent in such capacity shall have no duties or obligations except those expressly set forth herein and no other duties or obligations of the Agent shall be implied in this Agreement or in any other Credit Document. The Agent may perform such duties or obligations by or through its agents or employees. The Agent shall not by reason of this Agreement or any of the other Credit Documents have a fiduciary duty in respect of any Lender. As to any matters not expressly provided for by this Agreement, the Agent is not required to exercise any discretion or to take any action, but is required to act or to refrain from acting (and is fully protected in so acting or refraining from acting) upon the instructions of the Lenders or the Majority Lenders, as the case may be. Those instructions shall be binding upon all Lenders, but the Agent is not required to take any action which exposes the Agent to personal liability or which is contrary to this Agreement or Applicable Law.

## **10.2 Disclaimer of Agent**

The Agent makes no representation or warranty, and assumes no responsibility with respect to the due execution, legality, validity, sufficiency, enforceability or collectability of this Agreement or any other Credit Document. The Agent assumes no responsibility for the financial condition of any Borrower or Material

Entity, or for the performance of the obligations of any Borrower or Material Entity under this Agreement or any other Credit Document. The Agent assumes no responsibility with respect to the accuracy, authenticity, legality, validity, sufficiency or enforceability of any documents, papers, materials or other information furnished by any Borrower or Material Entity to the Agent. The Agent shall not be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or as to the use of the proceeds of the Facilities or of the existence or possible existence of any Default or Event of Default. Neither the Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them as Agent under or in connection with the Agreement except for its or their own gross negligence or willful misconduct. With respect to its Commitments, the Lender acting as Agent shall have the same rights and powers hereunder as any other Lender, and may exercise the same as though it were not performing the duties and functions delegated to it as Agent hereunder.

### 10.3 Failure of a Lender to Fund

- (a) Unless the Agent has actual knowledge that a Lender has not made or will not make available to the Agent for value on a Drawdown Date the applicable amount required from such Lender pursuant to Sections 2.11 or 2.14, the Agent shall be entitled to assume that such amount has been or will be received from such Lender when so due and the Agent may (but shall not be obliged to), in reliance upon such assumption, make available to the Borrowers a corresponding amount (except that no such amount shall be made available to the Borrowers in the case of a deemed Advance). If such amount is not in fact received by the Agent from such Lender on such Drawdown Date and the Agent has made available a corresponding amount to the Borrowers on such Drawdown Date as aforesaid (or is deemed to have made an Advance to the Borrowers in such amount), such Lender shall pay to the Agent on demand an amount equal to the aggregate of the applicable amount required from such Lender pursuant to Sections 2.11 or 2.14, plus an amount equal to the product of (i) the rate per annum applicable to overnight deposits made with the Agent for amounts approximately equal to the amount required from such Lender multiplied by (ii) the amount that should have been paid to the Agent by such Lender on such Drawdown Date and was not, multiplied by (iii) a fraction, the numerator of which is the number of days that have elapsed from and including such Drawdown Date to but excluding the date on which the amount is received by the Agent from such Lender and the denominator of which is 365 in the case of all Advances. A certificate of the Agent containing details of the amount owing by a Lender under this Section shall be binding and conclusive in the absence of manifest error. If any such amount is not in fact received by the Agent from such Lender on such Drawdown Date, the Agent shall be entitled to recover from the Borrowers, on demand, the related amount made available by the Agent to the Borrowers as aforesaid together with interest thereon at the applicable rate per annum payable by the Borrowers hereunder.
- (b) Notwithstanding the provisions of Section 10.3(a), if any Lender fails to make available to the Agent its Proportionate Share of any Advance, which for greater certainty includes a deemed Advance (such Lender being herein called the "**Defaulting Lender**"), the Agent shall forthwith give notice of such failure by the Defaulting Lender to the Borrowers (except where such failure relates to a deemed Advance) and to the other Lenders. The Agent shall then forthwith give notice to the other Lenders that any Lender may make available to the Agent all or any portion of the Defaulting Lender's Proportionate Share of such Advance (but in no way shall any other Lender or the Agent be obliged to do so) in the place of the Defaulting Lender. If more than one Lender gives notice that it is prepared to make funds available in the place of a Defaulting Lender in such circumstances and the aggregate of the funds which such Lenders (herein collectively called the "**Contributing Lenders**" and individually called the "**Contributing Lender**") are prepared to make available exceeds the

amount of the Advance which the Defaulting Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its Proportionate Share of such Advance based on the Contributing Lenders' relative commitments to advance in such circumstances. If any Contributing Lender makes funds available in the place of a Defaulting Lender in such circumstances, then the Defaulting Lender shall pay to any Contributing Lender making the funds available in its place, forthwith on demand, any amount advanced on its behalf together with interest thereon at the rate applicable to such Advance from the date of advance to the date of payment, against payment by the Contributing Lender making the funds available of all interest received in respect of the Advance from the Borrowers. The failure of any Lender to make available to the Agent its Proportionate Share of any Advance as required herein shall not relieve any other Lender of its obligations to make available to the Agent its Proportionate Share of any Advance as required herein.

#### **10.4 Payments by the Borrowers and Material Entities**

All payments made by or on behalf of any Borrower or Material Entity pursuant to this Agreement or the other Credit Documents shall be made to and received by the Agent on behalf of the Lenders and shall be distributed by the Agent to the Lenders as soon as possible upon receipt by the Agent. Subject to the provisions of Section 10.5 hereof, the Agent shall distribute in the following order:

- (a) unpaid fees, costs and expenses of the Agent;
- (b) payments of interest, fees and Make-Whole Amounts in accordance with each Lender's Proportionate Share of the Facilities;
- (c) repayments of principal in accordance with each Lender's Proportionate Share of the Facilities;
- (d) amounts received by the Agent (net of all relevant costs and expenses of the Agent) as a result of the exercise of any right of set-off, combination or consolidation of accounts, or by counterclaim or cross-action, in accordance with each Lender's Proportionate Share of the then outstanding Obligations owing to all of the Lenders and any Swap Lender at the time of such set-off, combination or consolidation of accounts or if applicable, at the time of the receipt of such amounts from any counterclaim or cross-action; and
- (e) all other payments received by the Agent under this Agreement, in accordance with what would otherwise be each Lender's Proportionate Share of the Facilities.

Notwithstanding the foregoing, any such distribution that would otherwise be made pursuant to Section 10.4(d) on account of any outstanding Bankers' Acceptances, Notional Bankers' Acceptances or Letters of Credit shall be set aside in a separate collateral account for the primary benefit of the Lenders who have issued such Bankers' Acceptances, Notional Bankers' Acceptances or Letters of Credit (and for the secondary benefit of the Lenders in respect of other Obligations owing by the Borrowers to the Lenders) until and to the extent that such Obligations become matured and not contingent, at which time such distributions shall be made to the Lenders for whose primary benefit such amounts are held.

Subject to Section 10.5, if the Agent does not distribute a Lender's Proportionate Share of a payment made by any Borrower or Material Entity to or for the benefit of that Lender for value on the day that payment is made or deemed to have been made to the Agent, the Agent shall pay to the Lender on demand an amount equal to the product of (i) the Agent's rate per annum applicable to overnight deposits for amounts approximately equal to the amount of the payment multiplied by (ii) the

Lender's Proportionate Share of the amount received by the Agent and not so distributed, multiplied by (iii) a fraction, the numerator of which is the number of days that have elapsed from and including the date of receipt of the payment by the Agent to but excluding the date on which the payment is made by the Agent to such Lender and the denominator of which is 365.

## 10.5 Payments by Agent

- (a) For greater certainty, the following provisions shall apply to any and all payments made by the Agent to the Lenders hereunder:
- (i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrowers or the Material Entities;
  - (ii) if the Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Borrowers or the Material Entities under the Credit Documents, the Agent shall have no obligation to remit to each Lender any amount other than such Lender's Proportionate Share (based on the then outstanding Obligations of the Borrowers hereunder) of that amount which is the amount actually received by the Agent;
  - (iii) if any Lender advances more or less than its Proportionate Share of the Facilities, such Lender's entitlement to such payment shall be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
  - (iv) if a Lender's Proportionate Share of an Advance has been advanced for less than the full period to which any payment by any Borrower relates, such Lender's entitlement to such payment shall be reduced in proportion to the length of time such Lender's Proportionate Share of the applicable Advance has actually been outstanding;
  - (v) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall, in the absence of manifest error, be binding and conclusive;
  - (vi) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein; and
  - (vii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set out opposite its signature block to this Agreement unless notice to the contrary is received by the Agent from such Lender.
- (b) Unless the Agent has actual knowledge that any Borrower has not made or will not make a payment to the Agent for value on the date in respect of which such Borrower has notified the Agent that the payment will be made, the Agent shall be entitled to assume that such payment has been or will be received from such Borrower when due and the Agent may (but shall not be obliged to), in reliance upon such assumption, pay the Lenders' corresponding amounts. If the payment by any Borrower is in fact not received by the Agent on the required date and the Agent has made available corresponding amounts to the Lenders, such Borrower shall, without limiting its other obligations under this Agreement, indemnify the Agent against any and all liabilities, obligations, losses (other than loss of profit), damages, penalties, and all reasonable costs, expenses or disbursements of any kind or nature

whatsoever that may be imposed on or incurred by the Agent as a result of such non-payment. A certificate of the Agent with respect to any amount owing under this Section shall be *prima facie* evidence of the amount owing in the absence of manifest error. If a payment is not in fact received by the Agent from any Borrower and the Agent has paid to a Lender a corresponding amount, such Lender shall pay to the Agent on demand an amount equal to the aggregate of the amount of such payment made to the Lender plus the product of (i) the Lender's rate per annum applicable to overnight deposits for amounts approximately equal to the amount paid by the Agent to such Lender and not so received from such Borrower multiplied by (ii) the amount paid by the Agent to such Lender and not so received from such Borrower, multiplied by (iii) a fraction, the numerator of which is the number of days that have elapsed from and including the date of payment by the Agent to the Lender to but excluding the date on which payment is made by such Lender to the Agent and the denominator of which is 365.

## 10.6 Direct Payments

The Lenders agree among themselves that, except as otherwise provided for in this Agreement and except as necessary to adjust for Advances that are not in each Lender's Proportionate Share under the Facilities, all sums received by a Lender (including amounts received by a Swap Lender with respect to Eligible Swaps) relating to this Agreement, or by virtue of the other Credit Documents or by virtue of any Eligible Swaps, whether received by voluntary payment, by the enforcement of the Security, the exercise of the right of set-off, combination or consolidation of accounts, or compensation or by counterclaim, cross-action or otherwise, shall be shared by each Lender in its Proportionate Share of the Facilities or the Obligations then outstanding, as applicable, in accordance with Section 10.4 and each Lender undertakes and agrees to do all such things as may be reasonably required to give full effect to this Section 10.6, including without limitation, the purchase from other Lenders of a portion of any Advances by the Lender who has received an amount including amounts received by a Swap Lender in excess of its Proportionate Share as shall be necessary to cause such purchasing Lender to share the excess amount rateably in its Proportionate Share with the other Lenders. If any sum which is so shared is later recovered from the Lenders who originally received it, the Lender shall restore its Proportionate Share of such sum to such Lenders, without interest. If any Lender or Swap Lender (a "**Receiving Lender**") shall obtain any payment of Obligations as referred to above, the Receiving Lender shall forthwith remit such payment to the Agent and, upon receipt, the Agent shall distribute such payment in accordance with the provisions of Section 10.4.

## 10.7 Administration of the Facilities

- (a) Unless otherwise specified herein, the Agent shall perform the following duties under this Agreement:
  - (i) take delivery of each Lender's Proportionate Share of an Advance and make all Advances hereunder in accordance with the procedures set forth in Sections 2.11 or 2.14;
  - (ii) use reasonable efforts to promptly collect all sums due and payable by the Borrowers pursuant to this Agreement;
  - (iii) make all payments to the Lenders in accordance with the provisions hereof;
  - (iv) hold all legal documents relating to the Facilities, maintain complete and accurate records showing all Advances made by the Lenders, all remittances and payments made by the Borrowers to the Agent, all remittances and payments made by the Agent to the Lenders and allow each Lender and their respective advisors to examine such accounts, records and documents at their own expense, and provide

any Lender, upon reasonable notice, with such copies thereof as such Lender may reasonably require from time to time at its expense;

- (v) except as otherwise specifically provided for in this Agreement, promptly advise each Lender upon receipt of each notice and deliver to each Lender, promptly upon receipt, all other written communications furnished by any Borrower to the Agent pursuant to this Agreement, including without limitation, copies of financial reports and certificates which are to be furnished to the Agent;
  - (vi) forward to each of the Lenders one copy each of this Agreement and the other Credit Documents;
  - (vii) promptly forward to each Lender, upon request, an up-to-date loan status report and any other information respecting the Borrowers reasonably requested by such Lender;
  - (viii) upon learning of same, promptly advise each Lender in writing of the occurrence of an Event of Default or the occurrence of any event, condition or circumstance which could be expected to have a Material Adverse Effect or of the occurrence of any material adverse change in the financial condition or Property of any Borrower or Material Entity; provided that, except as aforesaid, the Agent shall be under no duty or obligation whatsoever to provide any notice to the Lenders, and further provided that each Lender hereby agrees to notify the Agent of any Default or Event of Default of which it may reasonably become aware; and
  - (ix) advise each Lender in writing of any change in the Swingline Lender, promptly upon learning of same.
- (b) The Agent may take the following actions only with the prior consent of the Majority Lenders, unless otherwise specified in this Agreement:
- (i) subject to Section 10.7(c), exercise any and all rights of approval and consent specifically conferred upon the Lenders (and not the Agent) by this Agreement;
  - (ii) amend, modify or waive any of the terms of this Agreement (including waiver of an Event of Default) if such action is not otherwise provided for in Section 10.7(c);
  - (iii) declare an Event of Default or take action to enforce performance of the Obligations of the Borrowers and the Material Entities under and in respect of the Credit Documents, enforce the Security and/or pursue any other legal remedy necessary;
  - (iv) declare the amounts outstanding under the Facilities to be due and payable in accordance with Section 9.2; and
  - (v) pay insurance premiums, taxes and any other sums as may be reasonably required to protect the interests of the Lenders.
- (c) The Agent may take the following actions only if the prior unanimous consent of the Lenders is obtained, unless otherwise contemplated or provided for in this Agreement:
- (i) amend, modify, discharge, terminate or waive any of the material terms of the Subsidiary Guarantees or the Security;

- (ii) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Facilities, reduce the interest rate applicable to the Facilities, reduce the fees payable with respect to the Facilities, extend any date fixed for payment of principal or interest relating to the Facilities (including a waiver of an Event of Default described in Section 9.1(a)), extend the respective Maturity Dates or affect the priority of the Security; and
  - (iii) amend the definition of "Majority Lenders" or this Section 10.7(c) and any other provision which has the effect of amending the level of consents or approvals required by or from the Lenders hereunder.
- (d) As between the Borrowers, on the one hand, and the Agent and the Lenders, on the other hand:
- (i) all statements, certificates, consents and other documents which the Agent purports to deliver on behalf of the Lenders or the Majority Lenders shall be binding on each of the Lenders, and the Borrowers shall not be required to ascertain or confirm the authority of the Agent in delivering such documents;
  - (ii) all certificates, statements, notices and other documents which are delivered by the Borrowers or any of them to the Agent in accordance with this Agreement shall be deemed to have been delivered to each of the Lenders;
  - (iii) all payments which are delivered by any Borrower to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders; and
  - (iv) unless a Default or an Event of Default has occurred and is continuing, the consent of the Borrowers to the appointment of any Successor Agent must be obtained, but such consent shall not be unreasonably withheld.

## **10.8 Rights of Agent**

- (a) In administering the Facilities or in realizing on the rights available under this Agreement or the other Credit Documents, the Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Borrowers, such solicitors, counsel, auditors and other experts and agents as the Agent may select, in its sole discretion, acting reasonably and in good faith after consultation with the Lenders.
- (b) The Agent shall be entitled to rely on any communication, instrument or document believed by it to be genuine and correct and to have been signed by the proper individual or individuals, and shall be entitled to rely and shall be protected in relying as to legal matters upon opinions of independent legal advisors selected by it. The Agent may also assume that any representation made by any Borrower is true and that no Default or Event of Default has occurred unless the officers or employees of the Lender acting as Agent, active in their capacity as officers or employees responsible for the Borrowers' Accounts, have actual knowledge to the contrary or have received notice to the contrary from any other party to this Agreement.
- (c) The Agent may, without any liability to account, but subject to the terms of this Agreement, enter into Swaps with any Borrower or Material Entity, accept deposits from and lend money

to and generally engage in any kind of banking or other business with the Borrowers, as if it were not the Agent.

- (d) The Agent shall not be required to advance its own funds for any purpose, and in particular, shall not be required to pay with its own funds insurance premiums, taxes or public utility charges or the cost of repairs or maintenance with respect to any Property of any Borrower or Material Entity, nor shall it be required to pay with its own funds the fees of solicitors, counsel, auditors, experts or agents engaged by it as permitted hereby.

#### **10.9 Acknowledgements, Representations and Covenants of Lenders**

- (a) It is acknowledged and agreed by each Lender that it has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, property, affairs, status and nature of the Borrowers and the Material Entities. Accordingly, each Lender confirms to the Agent that it has not relied, and will not hereafter rely, on the Agent (i) to check or inquire on its behalf into the adequacy or completeness of any information provided by any Borrower or Material Entity under or in connection with this Agreement, the other Credit Documents or the transactions herein contemplated (whether or not such information has been or is hereafter distributed to such Lender by the Agent) or (ii) to assess or keep under review on its behalf the financial condition, creditworthiness, property, affairs, status or nature of any Borrower or Material Entity.
- (b) Each Lender represents and warrants that it has the legal capacity to enter into this Agreement pursuant to its charter and any Applicable Law and has not violated its charter, constating documents or any Applicable Law by so doing.
- (c) Each Lender agrees to indemnify the Agent (to the extent not reimbursed by the Borrowers), rateably according to its Proportionate Share of the Commitments from and against any and all liabilities and obligations (whether direct or indirect, contingent or otherwise), losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of the Credit Documents or the transactions therein contemplated, 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 gross negligence or willful misconduct. Without limitation, each Lender agrees to reimburse the Agent promptly upon demand rateably according to its Proportionate Share of the Commitments for any out-of-pocket expenses (including counsel fees) incurred by the Agent in connection with the preservation of any rights of the Agent or the Lenders under, or the enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement or the other Credit Documents, to the extent that the Agent is not promptly reimbursed for such expenses by the Borrowers. The obligation of the Lenders to indemnify the Agent shall survive the termination of this Agreement.
- (d) Each Lender acknowledges and confirms that in the event that the Agent does not receive payment in accordance with this Agreement, it shall not be the obligation of the Agent to maintain the Facilities in good standing nor shall any Lender have recourse to the Agent in respect of any amounts owing to such Lender under this Agreement.
- (e) Each Lender acknowledges and agrees that its obligation to advance its Proportionate Share of Commitments in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.

- (f) Each Lender hereby acknowledges receipt of a copy of this Agreement and the other Credit Documents (to the extent that such Credit Documents have been delivered) and acknowledges that it is satisfied with the form and content of such documents.
- (g) Except to the extent recovered by the Agent from the Borrowers, promptly following demand therefor, each Lender shall pay to the Agent an amount equal to such Lender's Proportionate Share of the Commitments of any and all reasonable costs, expenses, claims, losses and liabilities incurred by the Agent in connection with this Agreement and the other Credit Documents (including, without limitation, the collection or enforcement thereof, which shall be based on each Lender's Proportionate Share of the Obligations hereunder), hereunder except for those incurred by reason of the Agent's gross negligence or willful misconduct.
- (h) Each Lender shall respond promptly to each request by the Agent for the consent of such Lender required hereunder.

#### **10.10 Action of the Lenders**

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, the remedies available to the Lenders under the Credit Agreement and the other Credit Documents are for the benefit of the Lenders collectively and that its rights hereunder and under the Subsidiary Guarantees and the Security are to be exercised by the Agent as required by this Agreement. Accordingly, except as otherwise expressly provided herein, each of the Lenders hereby covenants and agrees that it shall not take any action hereunder or under the Subsidiary Guarantees or the Security but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders or all of the Lenders, as required. Each of the Lenders hereby further covenants and agrees that upon any written agreement being given by the Majority Lenders or all of the Lenders, as required, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of the instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

#### **10.11 Successor Agent**

Subject to the appointment and acceptance of a Successor Agent as provided in this Section, and subject to Section 10.7(a)(iv), the Agent may resign at any time by giving 30 days' written notice thereof to the Lenders and the Borrowers, and may be removed at any time by the Majority Lenders upon 60 days' written notice if the Agent has been grossly negligent hereunder. Upon receipt of notice by the Lenders of the resignation of the Agent, or upon giving notice of termination to the Agent, the Majority Lenders may with the consent of the Borrowers (provided that the Lenders shall only be obligated to obtain such consent if no Default or Event of Default exists), such consent not to be unreasonably withheld, within 21 days, appoint a successor from among the Lenders or, if no Lender is willing to accept such an appointment, from among other banks to which the *Bank Act* (Canada) applies, which each have combined capital and reserves in excess of \$250,000,000, and which have offices in Calgary and Toronto (the "**Successor Agent**"). If no Successor Agent has been so appointed and has accepted such appointment within 21 days after the retiring Agent's giving of notice of resignation or receiving of notice of termination, then the retiring Agent may, on behalf of the Lenders, appoint a Successor Agent. If neither the Majority Lenders nor the Agent appoint a Successor Agent within such 21 days, then the Majority Lenders or the Agent may apply to a Justice of the Court of Queen's Bench of the Province of Alberta, on such notice as the Justice may direct, for the appointment of a Successor Agent, but any Successor Agent so appointed by the Court shall be subject to removal as aforesaid by the Majority Lenders. Upon the acceptance of any appointment as Agent hereunder by a Successor Agent, the Successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its further duties and obligations as Agent

under this Agreement and the other Credit Documents. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article shall continue to enure to its benefit and be binding upon it as to any actions taken or omitted to be taken by it while it was Agent hereunder.

### **10.12 Provisions Operative Between Lenders and Agent Only**

Except for the provisions of Sections 10.7(b), 10.7(c), 10.9(b) and 10.9(e), the provisions of this Article relating to the rights and obligations of the Lenders and the Agent *inter se* shall be operative as between the Lenders and the Agent only, and the Borrowers shall not have any rights or obligations under or be entitled to rely for any purpose upon such provisions.

## **ARTICLE XI ADDITIONAL LENDERS, SUCCESSORS AND ASSIGNS**

### **11.1 Successors and Assigns**

- (a) The Credit Documents shall be binding upon and enure to the benefit of the Agent, each Lender, each Borrower and their respective successors and assigns (including without limitation, any successor resulting from the amalgamation or consolidation of a Borrower with one or more corporations or other artificial bodies or resulting from the winding-up of one or more Material Entities or subsidiaries into a Borrower), except that, other than as provided herein, no Borrower shall assign any rights or obligations with respect to this Agreement or any other Credit Documents without the prior written consent of the Agent acting on the instructions of all of the Lenders.

The collective rights and obligations of the Lenders under this Agreement are assignable in whole or in part and any Lender shall be entitled to assign in whole or in part its individual rights and obligations hereunder or to permit other financial institutions to participate in the Facilities, all in accordance with the provisions of Section 11.2 and the other terms of this Agreement. Each Borrower hereby consents to the disclosure of any information and opinions relating to it by any Lender or the Agent to any potential lender or participant provided that the potential lender or participant agrees in writing to keep the information confidential and to return such information if it does not become a Lender or a participant.

Each assignment shall be of a uniform, and not a varying, percentage of all rights and obligations of the assignor(s) under or in respect of the Facilities. No assignment may be in an amount less than Cdn \$10,000,000 unless such assignment is of the entire Commitment of a Lender, or result in the Commitment of any Lender, determined as of the effective date of the Assignment Agreement with respect to such assignment, being less than Cdn \$10,000,000.

Notwithstanding any other provisions of this Agreement, each Lender agrees that:

- (i) it will provide the Agent and the Borrowers with notice of the assignment by it of any of its rights and obligations hereunder;
- (ii) any assignee or transferee of any of its rights and obligations hereunder will agree with the Agent and the Borrowers to be bound by the provisions of this Agreement;
- (iii) it shall not assign or transfer any of its rights and obligations hereunder to any person who is a non-resident within the meaning of the *Income Tax Act* (Canada); and

- (iv) it shall obtain the prior written consent of the Borrowers to such assignment (provided that it shall only be obligated to obtain such consent if no Default or Event of Default has occurred and is continuing), such consent of the Borrowers not to be unreasonably withheld.
- (b) A Participation by a Lender of its interest (or a part thereof) hereunder or a payment by a Participant to a Lender as a result of the Participation will not constitute a payment hereunder to the Lender or an Advance to the Borrowers.

## 11.2 Assignments

- (a) Subject to Section 11.1 and the other terms of this Agreement, the Lenders collectively or individually may assign to one or more assignees that is a bank or other financial institution resident in Canada all or a portion of their respective rights and obligations under this Agreement (including, without limitation, all or a portion of their respective Commitments); provided however, after the Agent makes a declaration pursuant to Section 9.2, a Lender may assign any of its rights and obligations under this Agreement to any person. The parties to each such assignment shall execute and deliver an Assignment Agreement to the Agent and, unless a Default or an Event of Default has occurred and is continuing, to each Borrower, for its respective acknowledgement, as the case may be, and recording by the Agent in the Register and, except in the case of an assignment by a Lender to an Affiliate of that Lender, shall pay a processing and recording fee of \$2,500 to the Agent. After such execution, delivery, acknowledgement and recording (i) the assignee thereunder shall be a party to this Agreement and, to the extent that rights and obligations hereunder have been assigned to it, have the rights and obligations of a Lender hereunder and (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights and be released from its obligations under this Agreement, other than obligations in respect of which it is then in default or which arose prior to its assignment, and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto.
- (b) The agreements of an assignee contained in an Assignment Agreement shall benefit the assigning Lender thereunder, the other Lenders, the Agent and the Borrowers in accordance with the terms of the Assignment Agreement.
- (c) The Agent shall maintain at its address referred to herein a copy of each Assignment Agreement delivered to and acknowledged by it and a register for recording the names and addresses of the Lenders and their respective Commitments from time to time (the "**Register**"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error. The Borrowers, the Agent and each of the Lenders may treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement, and need not recognize any person as a Lender unless it is recorded in the Register as a Lender. The Register shall be available for inspection by the Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior notice.
- (d) Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee and approved by the Borrowers (if applicable) and the Agent, the Agent shall, if the Assignment Agreement has been completed and is in the required form with such immaterial changes as are acceptable to the Agent:
  - (i) acknowledge the Assignment Agreement; and

- (ii) record the information contained therein in the Register.

### 11.3 Participation

Each Lender may sell an interest (other than by way of assignment pursuant to Section 11.2) to one or more banks, financial institutions or other persons (each a "**Participant**") in or to all or a portion of its rights and obligations (including, without limitation, all or a portion of its Commitment) under this Agreement (such interest is referred to herein as a "**Participation**") but the Participant shall not become a Lender and:

- (a) the Lender's obligations under this Agreement (including, without limitation, its Commitment) shall remain unchanged;
- (b) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;
- (c) the Borrowers, the Agent and the other Lenders shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement; and
- (d) no Participant shall have any right to approve any amendment or waiver of any provision of this Agreement, or any consent to any departure by any person therefrom.

### 11.4 Dissenting Lenders

If a Lender (in this Section 11.4 called a "**Dissenting Lender**") withholds its consent or its approval following a request of the Borrowers or any of them as provided in this Agreement (including any consent to use Facility A for a Takeover) and, as a result, the consent of the required Lenders cannot be obtained in connection with such request, the Borrowers may, by giving notice to each Dissenting Lender and to the Agent within 10 days of being advised by the Agent of whether the Lenders have consented to such request, designate an alternate lender (which need not be an existing Lender) to purchase an assignment in accordance with Section 11.2 of such Dissenting Lender's Commitment and outstanding Advances (which alternative lender shall purchase such assignment prior to the expiry of such 10-day period); provided that no Lender shall be obligated to make any such assignment as a result of a demand by the Borrowers pursuant to this Section 11.4 unless said assignment is done on a without warranty basis and unless and until such Dissenting Lender shall have received one or more payments from either the Borrowers or one or more assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the Advances owing to such Dissenting Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Dissenting Lender under this Agreement (including without limitation all losses, costs and expenses suffered or incurred by the Dissenting Lender as a result of complying with this Section 11.4. Any such alternate lender is subject to:

- (a) the Agent's prior written approval, such approval not to be unreasonably withheld, and
- (b) the approval of the Lenders, not to be unreasonably withheld, holding no less than 67% of the Total Commitment then in effect less the aggregate Commitments of the Dissenting Lender.

Nothing contained herein shall be deemed to obligate any Lender or the Agent to agree to any such request made by the Borrowers.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

### **12.1 Capitalized Terms**

All capitalized terms used in any of the Credit Documents (other than this Agreement) which are defined in this Agreement shall have the meaning defined herein unless otherwise defined in the other document.

### **12.2 Severability**

Any provision of this Agreement which is or becomes prohibited or unenforceable in any relevant jurisdiction shall not invalidate or impair the remaining provisions hereof which shall be deemed severable from such prohibited or unenforceable provision and any such prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Should this Agreement fail to provide for any relevant matter, the validity, legality or enforceability of this Agreement shall not hereby be affected.

### **12.3 Amendment, Supplement or Waiver**

No amendment, supplement or waiver of any provision of the Credit Documents, nor any consent to any departure by any Borrower or Material Entity therefrom, shall in any event be effective unless it is in writing, makes express reference to the provision affected thereby and is signed by the Lenders and the Borrowers (or Material Entities, as applicable), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver or act or omission of the Lenders shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or breach by any Borrower or Material Entity of any provision of the Credit Documents or the rights resulting therefrom.

### **12.4 Governing Law; This Agreement to Govern**

This Agreement shall be construed in accordance with and governed by the laws of the Province of Alberta and the laws of Canada applicable therein. In the event of any conflict between the terms of this Agreement and the terms of any other Credit Document, the provisions of this Agreement shall govern to the extent necessary to remove the conflict.

### **12.5 Permitted Encumbrances**

The designation of a Security Interest as a Permitted Encumbrance is not, and shall not be deemed to be, an acknowledgment by the Lenders that the Security Interest shall have priority over the Security.

### **12.6 Currency**

All payments made hereunder shall be made in Canadian Dollars except in respect of US Base Rate Advances, LIBOR Advances and US Dollar denominated Letters of Credit which shall be repaid in US Dollars.

### **12.7 Expenses and Indemnity**

All statements, reports, certificates, opinions, appraisals and other documents or information required to be furnished to the Agent and the Lenders by the Borrowers under this Agreement shall be supplied without cost to the Agent and the Lenders. The Borrowers shall pay on demand all reasonable out of pocket costs and expenses of the Agent and the Lenders (including, without limitation, long distance telephone and courier charges and the reasonable fees and expenses of counsel for the Agent and the Lenders on a solicitor and his own client basis), incurred in connection with (i) the preparation, execution, delivery, administration, periodic review, modification or amendment of the Credit Documents (but not the costs and expenses incurred

in connection with any transfer or assignment of the Facilities or Participation in the Facilities, or any of them); (ii) any enforcement of the Credit Documents; (iii) obtaining advice as to their rights and responsibilities in connection with the Facilities and the Credit Documents; (iv) reviewing, inspecting and appraising the collateral that is the subject of the Security at reasonable intervals; and (v) other matters relating to the Facilities, or either of them. Such costs and expenses shall be payable whether or not an Advance is made under this Agreement.

Each Borrower shall indemnify the Agent and each Lender against any liability, obligation, loss or expense which it may sustain or incur as a consequence of (i) any representation or warranty made herein by any Borrower which was incorrect at the time it was made or deemed to have been made, (ii) a default by any Borrower in the payment of any sum due from it (irrespective of whether an Advance is deemed to be made to the Borrowers to pay the amount that the Borrowers have failed to pay), including, but not limited to, all sums (whether in respect of principal, interest or any other amount) paid or payable to lenders of funds borrowed by a Lender in order to fund the amount of any such unpaid amount to the extent such Lender is not reimbursed pursuant to any other provisions of this Agreement, (iii) the failure of any Borrower to complete any Advance or make any payment after notice therefor has been given under this Agreement, (iv) the repayment, prepayment or Conversion (whether by acceleration or otherwise) of a LIBOR Advance or a BA Advance by any Borrower on a date other than the maturity date thereof, and (v) any other default by any Borrower hereunder. A certificate of the Agent or any Lender as to the amount of any such loss or expense shall be *prima facie* evidence as to the amount thereof, in the absence of manifest error.

In addition, each Borrower shall indemnify the Agent and each Lender and their respective directors, officers, employees and representatives (the "**Indemnified Parties**"), from and against any and all actions, proceedings, claims, losses, damages, liabilities, expenses and obligations of any kind that may be incurred by or asserted against any of them as a result of or in connection with the making of any Advance hereunder, other than arising from the gross negligence or willful misconduct of the Agent or such Lender or any other Indemnified Party. Whenever any such claim shall arise, the Indemnified Party shall promptly notify the Borrowers of the claim and, when known, the facts constituting the basis for such claim, and if known, the amount or an estimate of the amount of the claim. The failure of an Indemnified Party to give notice of a claim promptly shall not adversely affect the Indemnified Party's rights to indemnity hereunder, except to the extent such failure adversely affects the right of the Borrowers to assert any reasonable defence to such claim.

The Indemnified Party shall not settle or compromise any claim by a third party for which it is entitled to indemnification under this Section 12.7, without the prior written consent of the Borrowers. Each Borrower at its sole cost and expense may, upon written notice to the Indemnified Party, assume the defense of any such claim or any legal proceeding resulting therefrom. The Indemnified Party shall be entitled to participate in (but not control) the defense of any such action, with its own counsel and at its own expense. If any Borrower does not assume the defense of any such claim or litigation resulting therefrom, the Indemnified Party may defend against such claim or litigation, in such manner as it may deem appropriate and at the expense of the Borrowers, including, but not limited to, settling such claim or litigation, after giving notice of the same to and receiving the consent of the Borrowers (which consent shall not be unreasonably withheld). In such case the Borrowers shall be entitled to participate in (but not control) the defense of such action, with its own counsel and at its own expense.

The provisions of this Section 12.7 shall survive the termination of this Agreement and repayment of the Obligations.

## **12.8 Manner of Payment and Taxes**

All payments to be made by the Borrowers pursuant to the Credit Documents are to be made without set-off, compensation or counterclaim, free and clear of and without deduction for or on account of any Tax, including but not limited to withholding taxes, except for Taxes on the overall net income of a Lender (such taxes applicable to the overall net income of a Lender are herein referred to as "**Excluded Taxes**"). If any Tax, other than Excluded Taxes, is deducted or withheld from any payments under the Credit Documents the

Borrowers shall promptly remit to the applicable Lender in the currency in which such payment was made, the equivalent of the amount of Tax so deducted or withheld together with the relevant receipt addressed to the applicable Lender. If any Borrower is prevented by operation of law or otherwise from paying, causing to be paid or remitting such Tax, the interest or other amount payable under the Credit Documents will be increased to such rates as are necessary to yield and remit to each Lender the principal sum advanced or made available together with interest at the rates specified in the Credit Documents after provision for payment of such Tax.

If any Borrower makes any payment under this Section for the account of a Lender, such Lender shall take reasonable steps to minimize the net amount payable by that Borrower under this Section, but no Lender shall be obliged to disclose any information to that Borrower concerning its income or taxes that is not otherwise publicly available.

In the event any Borrower has made a payment pursuant to this Section 12.8 and any Lender is thereafter granted or receives a credit, refund or remission in respect of the Tax for which the deduction or withholding was made, then such Lender shall, subject to that Borrower having paid the relevant amount payable under this Section 12.8 and to the extent it is satisfied that it can do so without prejudice to the retention of the amount of such credit or refund, refund to that Borrower such amount (if any) as such Lender determines in good faith will leave such Lender in no worse position than would have been the case if there had been no obligation to make such deduction or withholding in the first place. No Lender shall be obligated to provide to the Borrowers copies of all or any part of its tax returns, financial statements or other corporate financial data by reason of any such matter.

## **12.9 Increased Costs**

- (a) If, after the date hereof, the introduction of or any change in any Applicable Laws or in the interpretation or application thereof by any court or by any other Governmental Authority charged with the interpretation or administration thereof, or if compliance by any Lender with any request or directive from any central bank or other fiscal, monetary or other authority issued after the date hereof (whether or not having the force of law):
  - (i) subjects the Lenders (or any of them) to, or causes the withdrawal or termination of a previously granted exemption with respect to, any taxes (other than taxes on the Lenders' income), or changes the basis of taxation of payments due to the Lenders (or any of them), or increases any existing taxes (other than taxes on the Lenders' income) on payments of principal, interest or other amounts payable by the Borrowers to the Lenders (or any of them) under this Agreement;
  - (ii) imposes, modifies or deems applicable any reserve, liquidity, special deposit, regulatory or similar requirement against assets or liabilities held by, or deposits in or for the account of, or loans by the Lenders (or any of them), or any acquisition of funds for loans or commitments to fund loans or obligations in respect of undrawn, committed lines of credit or in respect of Bankers' Acceptances accepted by a BA Lender;
  - (iii) imposes on the Lenders (or any of them) or requires there to be maintained by the Lenders (or any of them) any capital adequacy or additional capital requirements (including, without limitation, a requirement which affects a Lenders' allocation of capital resources to its obligations) in respect of any Advance or obligation of a Lender hereunder, or any other condition with respect to this Agreement;
  - (iv) otherwise imposes on the Lenders (or any of them), any other condition or requirement affecting this Agreement or any Advance or any obligation of the

Lenders (or any of them) hereunder which directly or indirectly affects the cost to the Lenders (or any of them) of making available, funding or maintaining any Advance or the Obligations owing by the Borrowers hereunder;

and the result of (i), (ii), (iii) or (iv) above, in the sole determination of the affected Lender acting in good faith, is:

- (v) to increase the cost to such Lender of performing its obligations hereunder with respect to any Advance;
- (vi) to reduce any amount received or receivable by such Lender hereunder or its effective return hereunder or on its capital in respect of any Advance;
- (vii) to reduce the interest, commitment fees or other fees payable to the Lenders hereunder; or
- (viii) to cause such Lender to make any payment with respect to or to forego any return on or calculated by reference to, any amount received or receivable by such Lender hereunder with respect to any Advance;

such Lender shall determine such additional cost, reduction in income or payment, without duplication (the "**Additional Compensation**") and shall promptly notify the Borrowers. Such affected Lender shall provide to the Borrowers a photocopy of the relevant law, rule, guideline, regulation, treaty, or official directive and a certificate of a duly authorized officer of such Lender setting forth the Additional Compensation and the basis of calculation thereof and for the purposes of calculating such amount such Lender shall treat the Borrowers and the Facilities in a manner consistent with comparable borrowers and transactions. The Borrowers shall pay to such affected Lender forthwith following the giving of such notice such Additional Compensation calculated from the effective date of the relevant adoption or change; provided that the affected Lender shall not be entitled to Additional Compensation for any period more than 180 days prior to the date of such notice, and shall not be entitled to Additional Compensation to the extent that such increase in costs or reduction in amounts received or to be received or reduction in return is reflected in or recovered by an increase in the interest or other amounts payable hereunder other than pursuant to this Section 12.9. Such affected Lender shall endeavour to minimize the incidence of any Additional Compensation.

- (b) If a Lender notifies the Borrowers that Additional Compensation is owed to such Lender, the Borrowers shall have the right, upon at least two Business Days' irrevocable written notice to such affected Lender:
  - (i) to (subject to limitations on repayments contained in Section 3.8) repay to such Lender the relevant portion of any Advance on the date specified in such notice together with all interest accrued thereon to the date of repayment, the Additional Compensation if any to the date of payment and all other amounts, if any, payable for the account of the Lender hereunder in respect of such Advance (including any amounts payable under Section 12.7);
  - (ii) to effect a Conversion of the relevant portion of any Advance (subject always to the provisions of this Agreement); or
  - (iii) provided no Default shall have occurred and is continuing, require such Lender to sell and assign to a bank or other financial institution acceptable to the Agent, acting

reasonably, all of such Lender's rights and obligations hereunder in the same manner described in Section 11.2, upon receipt by such Lender from such bank or financial institution of all amounts owing to such Lender under the Credit Documents, including without limitation, all unpaid interest accrued thereon to the date of payment and all other amounts, if any, payable for the account of such Lender hereunder in respect of all Advances made by it and in respect of all losses, costs and expenses suffered or incurred by such Lender hereunder as a result of such Lender complying with this Section 12.9 (b)(iii); and

- (c) Each Lender shall use its reasonable efforts to reduce the amount of Additional Compensation payable pursuant to this Section 12.9; provided that no Lender shall have an obligation to expend its own funds, suffer any economic hardship or take any action detrimental to its interests in connection therewith.

#### **12.10 Interest on Miscellaneous Amounts**

If any Borrower fails to pay any amount payable hereunder (other than principal, interest thereon or interest upon interest which is payable as otherwise provided in this Agreement) on the due date, such Borrower shall, on demand, pay interest on such overdue amount to each Lender from and including such due date up to but excluding the date of actual payment, both before and after demand, default or judgment, at a rate of interest per annum equal to the Prime Rate compounded monthly.

#### **12.11 Address for Notice**

Notice to be given under the Credit Documents to any of the Borrowers, the Swingline Lender or the Agent shall, except as otherwise specifically provided, be in writing addressed to the party for whom it is intended and, unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt by the other party of an original of such notice or a facsimile thereof if sent by facsimile transmission. For the purposes hereof notice shall be given: (i) to the Borrowers c/o CCS at Suite 2400, 530 – 8<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 3S8, Attention: Chief Financial Officer, facsimile no: 403-261-5612, (ii) to the Agent at The Toronto-Dominion Bank, Royal Trust Tower, 18<sup>th</sup> Floor, 77 King Street West, Toronto, Ontario M5K 1A2, Attention: Vice-President, Loan Syndications – Agency, facsimile no: 416-982-5535, and (iii) to the Swingline Lender at The Toronto-Dominion Bank, Calgary Place, Tower Two, 4<sup>th</sup> Floor, 355 – 4<sup>th</sup> Avenue S.W., Calgary, Alberta T2P 0H9, Attention: Relationship Manager, facsimile no: 403-292-1317; or in each case at such other mailing or facsimile address as each party from to time may notify the others as aforesaid.

#### **12.12 Time of the Essence**

Time shall be of the essence in this Agreement.

#### **12.13 Further Assurances**

The Borrowers shall, at the request of a Lender, do all such further acts and execute and deliver all such further documents as may, in the reasonable opinion of such Lender, be necessary or desirable in order to fully perform and carry out the purpose and intent of the Credit Documents.

#### **12.14 Term of Agreement**

Except as otherwise provided herein, this Agreement shall remain in full force and effect until the payment and performance in full of all of the Obligations and the termination of this Agreement.

**12.15 Payments on Business Day**

Whenever any payment or performance under the Credit Documents would otherwise be due on a day other than a Business Day, such payment shall be made on the following Business Day.

**12.16 Entire Agreement**

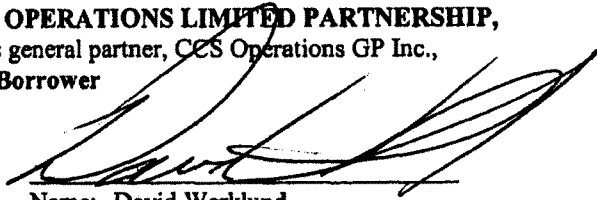
This Agreement constitutes the entire agreement between the parties hereto concerning the matters addressed in this Agreement, and cancel and supersede any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof.

**12.17 Counterparts and Facsimile**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. For the purposes of this Section, the delivery of a facsimile copy of an executed counterpart of this Agreement shall be deemed to be valid execution and delivery of this Agreement, but the party delivering a facsimile copy shall deliver an original copy of this Agreement as soon as possible after delivering the facsimile copy.


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

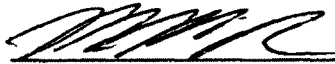
**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.,  
as a Borrower

By:   
Name: David Werklund  
Title: President and Chief Executive Officer

By:   
Name: Marshall McRae  
Title: Chief Financial Officer

**CCS INC.,**  
as a Borrower

By:   
Name: David Werklund  
Title: President and Chief Executive Officer

By:   
Name: Marshall McRae  
Title: Chief Financial Officer

**THE TORONTO-DOMINION BANK,  
as a Lender and as Swingline Lender**

By: Mark Williamson  
Name: \_\_\_\_\_  
Title: **MARK WILLIAMSON  
Relationship Manager**

By: Shankar Mazumdar  
Name: \_\_\_\_\_  
Title: **SHANKAR MAZUMDAR  
Sr. Manager  
Commercial Credit**

**THE TORONTO-DOMINION BANK,  
as Agent**


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

**THE TORONTO-DOMINION BANK,  
as a Lender and as Swingline Lender**

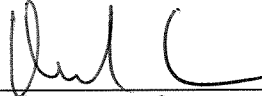
By: \_\_\_\_\_  
Name:  
Title:


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

**THE TORONTO-DOMINION BANK,  
as Agent**


By:  \_\_\_\_\_  
Name: **Michael A. Freeman**  
Title: **Vice President, Loan Syndications - Agency**

**SUN LIFE ASSURANCE COMPANY OF  
CANADA, as a Lender**

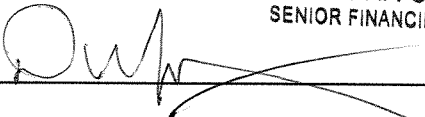
By:   
Name: KEITH CRESSMAN  
Title: AUP PRIVATE PLACEMENTS

By:   
Name: STEVE THEOFANIS  
Title: DIRECTOR, PRIVATE PLACEMENTS

**BANK OF MONTREAL,  
as a Lender**

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

Title: **DEBRA CHAPIN**  
**SENIOR FINANCING MANAGER**

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

Title: **Darren Yaworsky**  
**Senior Manager**

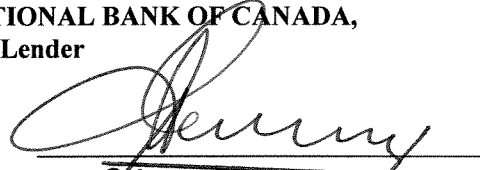
JAN 03 2006

**NATIONAL BANK OF CANADA,  
as a Lender**

By:

Name:

Title:



**G.A. (GREG) VOLSKY  
MANAGER  
COMMERCIAL BANKING**

By:


Name:

Title:




**DARRELL STELMACK  
MANAGER  
OILFIELD SERVICES GROUP**

**CANADIAN IMPERIAL BANK OF COMMERCE,  
as a Lender**


By:   
Name: Chris Perks  
Title: **Regional Team Leader**


Title: **CIBC Commercial Credit**

By:   
Name: Glen Farrow, Director  
Title: **CIBC Commercial Credit**

Title: **Oil & Gas and Prairies Region**


**CANADIAN WESTERN BANK,  
as a Lender**

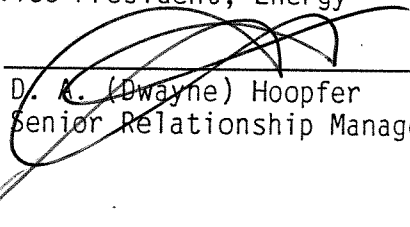
By:   
Name: Richard Hallson  
Title: Assistant Vice President

By:   
Name:  
Title:


**Stan Seto**  
Manager, Corporate Lending

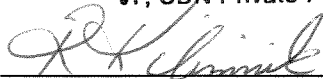
**ALBERTA TREASURY BRANCHES,  
as a Lender**

By:   
Name: Bruce Edgelow  
Title: Vice President, Energy

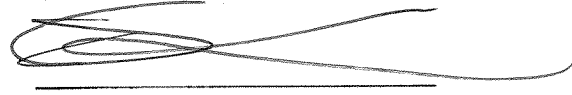
By:   
Name: D. A. (Dwayne) Hooper  
Title: Senior Relationship Manager

**THE MANUFACTURERS LIFE INSURANCE  
COMPANY, as a Lender**


By:   
Name: Patrick Chen  
Title: VP, CDN Private Placements

By:   
Name: Robert F. Kilimnik  
Title: VP & Managing Director NAFI

**FORTIS CAPITAL (CANADA) LTD.,  
as a Lender**



By: \_\_\_\_\_  
Name: **Doug Clark**  
Title: **Senior Vice President**

By:  \_\_\_\_\_  
Name: **Darrell Holley**  
Title: **Managing Director**

**SCHEDULE "A"** attached to and forming part of the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers, The Toronto-Dominion Bank and those other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

**COMMITMENTS OF LENDERS**

(expressed in Cdn Dollars)

<b><u>Name of Lender</u></b>	<b><u>Swingline Commitment</u></b>	<b><u>Facility A Commitment</u></b>	<b><u>Facility B Commitment</u></b>
The Toronto-Dominion Bank	\$25,000,000	\$70,000,000	Nil
Bank of Montreal	Nil	\$55,000,000	Nil
Canadian Imperial Bank of Commerce	Nil	\$55,000,000	Nil
National Bank of Canada	Nil	\$35,000,000	Nil
Alberta Treasury Branches	Nil	\$30,000,000	Nil
Canadian Western Bank	Nil	\$20,000,000	Nil
Fortis Capital (Canada) Ltd.	Nil	\$20,000,000	Nil
Sun Life Assurance Company of Canada	Nil	Nil	\$30,000,000
The Manufacturers Life Insurance Company	<u>Nil</u>	<u>Nil</u>	(1) \$ 4,000,000 (2) \$14,000,000 (3) <u>\$ 2,000,000</u>
	<b>\$25,000,000</b>	<b>\$285,000,000</b>	<b>\$50,000,000</b>

**SCHEDULE "B"** attached to and forming part of the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers, The Toronto-Dominion Bank and those other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

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**COMPLIANCE CERTIFICATE**

TO: THE TORONTO-DOMINION BANK, as Agent

Ladies and Gentlemen:

1. Reference is made to the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers (the "**Borrowers**"), The Toronto-Dominion Bank and the other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent (the "**Agent**"), as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. I, [name], in my capacity as [title] of • and not in any personal capacity, hereby certify that as of the date hereof:

- (a) the representations and warranties set forth in the Credit Agreement are in all material respects true and correct on the date hereof;
- (b) each Borrower has performed or observed or caused to be performed or observed the covenants set forth in the Credit Agreement to be performed or observed by it to the date hereof; and
- (c) there has not occurred any unremedied Default or Event of Default

3. As at [insert March 31, June 30, September 30 or December 31, as applicable], 20\_\_\_\_ pursuant to Section 8.2 of the Credit Agreement:

- (a) the Current Ratio is •:•,
- (b) the Funded Debt to EBITDA Ratio is •:•,
- (c) the Funded Debt to Capitalization Ratio is •:•, and
- (d) the Fixed Charge Coverage Ratio is •:•

Particulars of the calculation of each of the above ratios are as set out on Schedule "A" attached hereto, and also attached hereto is the management discussion and analysis of financial results for the most recently completed Fiscal Quarter.

4. Attached hereto is a detailed list and description of all Currency Swaps and Interest Swaps to which any Borrower or Material Entity is a party.

5. Based on the Funded Debt to EBITDA Ratio in Section 3(b) above, the Applicable Margin [remains the same as the last Fiscal Quarter][changes to •]:

**[insert applicable row amounts]**

6. The particulars of all dispositions and Acquisitions made by any Borrower or Material Entity during the last Fiscal Quarter (including all dispositions and acquisitions of Service Rigs and the particulars thereof), and the aggregate of all net proceeds of such dispositions in the current Fiscal Year, are attached hereto in accordance with Section 8.9 of the Credit Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.

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

**CCS INC.**

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



3. [For Drawdowns only] The representations and warranties set forth in the Credit Agreement are true and correct in all material respects on the date hereof.
4. Each Borrower has performed or observed or caused to be performed or observed the covenants set forth in the Credit Agreement to be performed or observed by it to the date hereof, and shall use the proceeds of any Advance only for the purposes set out in Sections 2.2 and 2.3 of the Credit Agreement.
5. There has not occurred any unremedied Default or Event of Default.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.

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

**CCS INC.**

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

**SCHEDULE "D"** attached to and forming part of the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers, The Toronto-Dominion Bank and those other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

---

**REPAYMENT NOTICE**

TO:          The Toronto-Dominion Bank, as Agent  
             The Toronto-Dominion Bank, as Swingline Lender

Dear Sirs:

1.      Reference is made to the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers (the "**Borrowers**"), The Toronto-Dominion Bank and the other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent (the "**Agent**"), as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as ascribed thereto in the Credit Agreement.
  
2.      Pursuant to Article 3 of the Credit Agreement, the Borrowers hereby request the following repayment:

- |  |       |
|--|-------|
| (a)      Date of repayment:  | _____ |
| (b)      Name of Borrower:   | _____ |
| (c)      Applicable Facility(s):<br>(specify Swingline Facility, Facility A or Facility B) | _____ |
| \$• to Swingline Facility:   | _____ |
| \$• to Facility A:   | _____ |
| \$• to Facility B:   | _____ |
| (d)      Type of Advance:  | _____ |
| (e)      Amount of repayment:  | _____ |
| (f)      Make-Whole Amount:  | _____ |
| (g)      Applicable Borrowers' Account(s) to be debited<br>(if applicable):                | _____ |
| (h)      Special Instructions (if any):  | _____ |

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.

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

**CCS INC.**

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

**SCHEDULE "E"** attached to and forming part of the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers, The Toronto-Dominion Bank and those other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

---

**REQUEST FOR AN OFFER OF EXTENSION**

TO: THE TORONTO-DOMINION BANK, as Agent

Ladies and Gentlemen:

We refer you to the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers (the "**Borrowers**"), The Toronto-Dominion Bank and the other banks and financial institutions from time to time party thereto, as Lenders, and the Toronto-Dominion Bank, as Agent (the "**Agent**"), as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined, shall have the same meanings herein as ascribed thereto in the Credit Agreement.

We hereby give notice of our request for an offer of extension of the Revolving Period for a further period of up to three years to [date] and consequent extension of the Swingline Maturity Date and the Facility A Maturity Date pursuant to Section 3.5 of the Credit Agreement.

As of the date hereof, there has not occurred any unremedied Default or Event of Default.

Yours very truly,

**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.

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

**CCS INC.**

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

**SCHEDULE "F"** attached to and forming part of the Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership, as borrowers, The Toronto-Dominion Bank and those other banks and financial institutions from time to time party thereto, as Lenders, and The Toronto-Dominion Bank, as Agent

---

**ASSIGNMENT AGREEMENT**

THIS ASSIGNMENT AGREEMENT made this • day of •.

B E T W E E N:

• (the "**Lender**")

OF THE FIRST PART

- and -

• (the "**Assignee**")

OF THE SECOND PART

WHEREAS the Lender is a party to a Credit Agreement dated as of January 3, 2006, made among CCS Inc. and CCS Operations Limited Partnership (the "**Borrowers**"), the Lenders (as defined therein) and The Toronto-Dominion Bank, as Agent (the "**Agent**"), as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**");

AND WHEREAS the Lender desires to assign to the Assignee a portion of its rights and obligations under the Credit Agreement (including, without limitation, that same portion of the Commitments) and the other Credit Documents;

AND WHEREAS pursuant to the terms of the Credit Agreement, the Lender has paid to the Agent a processing and recording fee, receipt of which shall be evidenced by the Agent's acknowledgement and approval hereof and the Lender has otherwise complied with the provisions set out in Article 11 of the Credit Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto agree as follows:

1. All capitalized terms used herein and not defined shall have the meaning ascribed thereto in the Credit Agreement.
2. Pursuant to and in accordance with Article 11 of the Credit Agreement, the Lender hereby irrevocably assigns and transfers to the Assignee and the Assignee hereby purchases from the Lender and assumes, all rights and obligations of the Lender under the Credit Agreement with respect to that portion of its Commitment(s) set forth in Appendix I hereto.
3. The Assignee agrees to be bound by the terms and conditions of the Credit Agreement and to perform all of the obligations of a Lender thereunder from and after the effective date of this Assignment Agreement.

4. The Assignee hereby confirms and agrees to the appointment of The Toronto-Dominion Bank as Agent.
5. All of the acknowledgements and representations of a Lender contained in Section 10.9 of the Credit Agreement are true and correct with respect to the Assignee and the Assignee hereby agrees to be bound by the covenants of a Lender under the Credit Agreement.
6. The representations, warranties, covenants and agreements contained herein shall survive the execution and delivery of this Assignment Agreement.
7. The parties hereto acknowledge and agree that the provisions of this Assignment Agreement shall enure to the benefit of the Borrowers, the Lender, the Agent and such other Lenders as may from time to time become parties to the Credit Agreement.
8. This Assignment Agreement shall be construed in accordance with, and all the rights of the parties hereto, shall be governed by, the laws of the Province of Alberta and the laws of Canada applicable therein.
9. This Assignment Agreement and any acknowledgements and approvals thereof may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement.
10. This Assignment Agreement shall become effective five (5) Business Days after the date on which the Agent acknowledges and consents to the assignment and transfer contemplated herein.

• [Lender]

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

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

• [Assignee]

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

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

Acknowledged and Consented to this • day of •

**THE TORONTO-DOMINION BANK,**  
as Agent

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

If no Default has occurred:

Consented to this • day of •

**CCS OPERATIONS LIMITED PARTNERSHIP,**  
by its general partner, CCS Operations GP Inc.

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

**CCS INC.**

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

**Appendix I**

NAME AND ADDRESS OF LENDER

•

Attention: •

NAME AND ADDRESS OF ASSIGNEE

LENDER'S COMMITMENT TO BE ASSIGNED

\$• of Swingline Commitment

\$• of Facility A Commitment

•

\$• of Facility B Commitment

Attention: •

Payments

All interest payments or other payments to be made to the Assignee by [bank wire transfer] to:

Notices

All notices and communications, except notice with respect to payment, and written confirmation of each such payment, to be addressed to the Assignee at:

•

Attention: •

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Attention: •

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