

**SOMERSET ENTERTAINMENT LIMITED PARTNERSHIP  
as Borrower**

and

**THE TORONTO-DOMINION BANK  
as Lead Arranger and Sole Bookrunner**

and

**THE INSTITUTIONS NAMED HEREIN AS LENDERS  
as Lenders**

and

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

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**CAD18,200,000  
THIRD AMENDED AND RESTATED  
CREDIT AGREEMENT**

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October 16, 2008



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**THIRD AMENDED AND RESTATED CREDIT AGREEMENT**

**THIS AGREEMENT** is made as of October 16, 2008.

**AMONG:**

**SOMERSET ENTERTAINMENT LIMITED PARTNERSHIP**  
as Borrower

- and -

**THE TORONTO-DOMINION BANK**  
as Lead Arranger and Sole Bookrunner

- and -

**THE INSTITUTIONS NAMED HEREIN AS LENDERS**  
as Lenders

- and -

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

**BACKGROUND:**

Pursuant to a credit agreement made as of March 18, 2005 (the “**Original Credit Agreement**”) The Toronto-Dominion Bank (“**TD**”) agreed to make a CAD8,000,000 364-day extendible revolving credit facility and a CAD12,000,000 term revolving credit facility available to the Borrower for the purposes and on the terms and conditions set out therein.

Pursuant to an amended and restated credit agreement made as of December 13, 2005 (the “**First Amended Credit Agreement**”), the Lenders increased the amount available under the Credit Facilities and made a CAD10,000,000 364-day extendible revolving credit facility and a CAD32,000,000 term revolving credit facility available to the Borrower for the purposes and on the terms and conditions set out therein.

Pursuant to a second amended and restated credit agreement made as of December 12, 2006 (as amended, the “**Second Amended Credit Agreement**”), the Lenders decreased the amount available under the Credit Facilities and made a CAD7,000,000 364-day extendible revolving credit facility and a CAD29,000,000 revolving term credit facility available to the Borrower for the purposes and on the terms and conditions set out therein.

The Borrower has requested the Lenders to make certain amendments to the credit facilities made available under the Second Amended Credit Agreement and the Lenders have agreed to do so on the terms and conditions set out herein.

**NOW THEREFORE** in consideration of the mutual obligations contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, subject to the

terms and conditions contained herein, the parties agree to amend and restate the Second Amended Credit Agreement so that it reads in its entirety as and from the Effective Time as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 General Definitions**

Unless the context otherwise requires, in this Agreement:

“**Acceptance**” means a Draft drawn by the Borrower, accepted by a Lender and issued for value pursuant to the Revolving Facility or the Term Facility.

“**Acceptance Proceeds**” means the cash proceeds realized on the sale of an Acceptance pursuant to this Agreement before deduction of the Stamping Fee.

“**Accession Agreement**” means an Accession Agreement to the Intercreditor Agreement referred to in Section 10.2.

“**Acquisition Agreement - Compass**” means the acquisition agreement dated November 15, 2005 among the Borrower, Somerset US, Compass, Compass Marketing, Inc., Keith Harrison and Robert Soskin pursuant to which, among other things, Somerset US agreed to acquire substantially all of the assets of Compass.

“**Advance**” means any amount of money or credit advanced, deemed advanced or to be advanced (as the context requires) by a Lender or the Lenders to the Borrower pursuant to this Agreement, whether by way of loan (including overdraft) or acceptance of Drafts, or any relevant portion thereof (as the context requires), or issue of a Standby Instrument.

“**Affected Senior Lender**” is used with the defined meaning assigned in Section 8.7 or 8.9 or Subsection 8.8.1 or 8.10.1, as applicable.

“**Affiliate**” in relation to any Person (the “**relevant party**”) means any other Person (i) that, directly or indirectly, Controls, is Controlled by or is under common Control with, the relevant party, (ii) that beneficially owns or Controls more than fifty percent (50%) of the Voting Capital Stock or Participating Capital Stock, on an undiluted or a fully diluted basis, of the relevant party or (iii) of which more than fifty percent (50%) of the Voting Capital Stock or Participating Capital Stock, on an undiluted basis or a fully diluted basis, is beneficially owned or Controlled by the relevant party.

“**Agent**” means TD acting in its capacity as administration agent under this Agreement for and on behalf of itself and the other Senior Lenders, and not in its individual capacity as a Lender, or (as the context requires) any replacement for such administration agent that is appointed pursuant to Subsection 16.16.1.

“**Agent’s Accounts**” means the following accounts maintained by the Agent to which payments and transfers to the Agent under this Agreement are to be made:

**For Canadian Dollars:**

Toronto Dominion Bank  
Toronto  
SWIFT: TDOMCATTOR  
Cdn\$ Account No.: 0360-01-2301253  
Favor: TD Bank, Toronto - Corporate Lending  
Ref: Somerset Entertainment Limited Partnership

**For US Dollars:**

Bank of America, New York  
SWIFT: BOFAUS3N  
US\$ Account No.: 6550-826-336  
Account with: Toronto Dominion Bank, Toronto  
SWIFT: TDOMCATTOR  
Favor: TD Bank Toronto - Corporate Lending  
US\$ Account No.: 0360-01-2301447  
Ref.: Somerset Entertainment Limited Partnership

or such other accounts of the Agent marked to such reference as the Agent may notify to each of the Lenders and the Borrower from time to time as being the accounts to which payments and transfers to the Agent pursuant to this Agreement are to be made.

“**Agreement**” means (i) in relation to any period or point in time after the First Amended Closing Date, but before the Second Amended Closing Date, the First Amended Credit Agreement, in relation to any period or point in time after the Second Amended Closing Date, but before the Effective Time, the Second Amended Credit Agreement and (iii) in relation to any period or point in time after the Effective Time, this third amended and restated credit agreement.

“**Amalgamation**” means the amalgamation effective the Original Closing Date amongst Somerset Entertainment Holdings Inc., Sandpiper Management Inc., Wind Swift Ltd., 2066787 and Somerset Entertainment Ltd.

“**Annual Forecast**” for any ensuing Fiscal Year means a detailed consolidated financial forecast for the Somerset Group for such ensuing Fiscal Year (broken out by Fiscal Quarter) which includes an income statement, balance sheet, cash flow projections, a capital expenditures budget, statement of material assumptions, narrative descriptive, explanation and a comparison to the results of the prior Fiscal Year.

“**Anti-Money Laundering Laws**” is used with the defined meaning assigned in Subsection 13.1.29(b).

“**Anti-Money Laundering Measures**” is used with the defined meaning assigned in Subsection 13.1.29(b)

“**Anti-Terrorism Laws**” means the OFAC Laws and Regulations, the Executive Orders and the USA Patriot Act.

“**Anti-Terrorism Policies**” is used with the defined meaning assigned in Subsection 14.1.17.

“**Applicable Law**” means any international treaty, any treaty with first nations peoples, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation or Order (including any consent decree or administrative Order), applicable to, or any guideline, policy or Authorization of any Governmental Body, arbitrator or other decision-making authority having jurisdiction with respect to any specified Person, property, transaction or event or any of such Person’s Business Assets, whether or not having the force of law, and any Award in any Litigation to which the Person in question is a party or by which such Person or any of its Business Assets is bound.

“**Applicable Margin**” in relation to any form of Advance (other than a Documentary Credit) or Standby Fee as of any date means the percentage rate per annum determined in accordance with the table set forth below by reference to the Total Debt/EBITDA Ratio most recently certified by the Borrower in a Compliance Certificate delivered to the Agent pursuant to Subsection 14.1.6:

<b>Total Debt / EBITDA Ratio</b>	<b>Canadian Prime Rate &amp; US Base Rate Loans</b>	<b>Acceptances &amp; Libor Loans</b>	<b>Standby Instruments</b>	<b>Standby Fee</b>
≤ 1.00:1	0.75%	2.25%	2.25%	0.60%
> 1.00:1 - ≤ 1.50:1	1.25%	2.75%	2.75%	0.75%
> 1.50:1	2.00%	3.50%	3.50%	1.00%

Changes in the Applicable Margin shall take effect as of the third Business Day following the date the Borrower delivers a Compliance Certificate to the Agent pursuant to Subsection 14.1.6 which, when delivered, discloses a Total Debt/EBITDA Ratio giving rise to such changes. The Applicable Margin applicable to all Loans and Standby Instruments outstanding on the date any such change takes effect and the Standby Fees will be adjusted immediately, but without retroactive effect. There will be no adjustments made with respect to outstanding Acceptances. Notwithstanding the foregoing, for the purposes of this definition: (i) the Total Debt/EBITDA Ratio (as defined in the Second Amended Credit Agreement) in effect immediately before the Effective Time shall continue to apply until changed in accordance with the provisions of this definition, (ii) if the Borrower fails to deliver a Compliance Certificate to the Agent by the date required to do so under Subsection 14.1.6, the Total Debt/EBITDA Ratio shall be deemed as from such date to be greater than 1.50:1 until such failure is cured, at which time the Applicable Margin shall be determined in accordance with the table set forth above, but without any adjustments having retroactive effect, and

(iii) if an Event of Default has occurred which has not been waived by the Required Lenders, (A) any reduction in the Applicable Margin which would, but for this provision, take place shall be deferred until the first Business Day of the calendar month following the month in which the Required Lenders waive such Event of Default and (B) the Applicable Margin applicable to all Types of Advances shall, to the extent permitted by applicable law, be increased by two percent (2%) per annum.

**“Approved Fund”** means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by a Lender, an Affiliate of a Lender or an entity or an Affiliate of an entity that administers or manages a Lender.

**“Auditors”** means the firm of Ernst & Young LLP or such other nationally recognized firm of chartered accountants not unacceptable to the Required Lenders as the Borrower may designate from time to time as its auditors.

**“Authorization”** means any authorization, approval, consent, exemption, licence, permit, franchise or no-action letter from any Governmental Body having jurisdiction with respect to any specified Person, property, transaction or event, or any of such Person’s Business Affairs or from any Person in connection with any easements or contractual rights.

**“Availability Period”** for each Credit Facility means the period from (and including) the Effective Time to (but excluding) the Maturity Date for that Credit Facility.

**“Award”** means any judgment, decree, injunction, rule, award or Order of any Governmental Body, arbitrator or other decision-making authority of competent jurisdiction.

**“BA Equivalent Advance”** is used with the defined meaning assigned in Section 5.10.

**“BA Reference Rate”** means (i) for each Lender that is a Schedule I Canadian chartered bank, CDOR and (ii) for each Lender that is not a Schedule I Canadian chartered bank, and is (A) a Non-Acceptance Lender, CDOR plus one-tenth of one percent (0.10%) per annum or (B) not a Non-Acceptance Lender, the lesser of (A) CDOR plus one-tenth of one percent (0.10%) per annum and (B) the interbank bid rate (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) quoted by such Lender as being the rate at which that Lender was receiving bids (which it was prepared to accept) to sell bankers’ acceptances of the specified maturity issued by that Lender in the relevant Canadian money markets as of 10:00 a.m. on such day.

**“Bankruptcy Event”** means, with respect to any Person, that such Person does not pay or perform its obligations generally as they become due or admits its

inability to pay or perform its debts generally, that such Person commits an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada), any Bankruptcy Proceeding is instituted by or against that Person (excluding any Bankruptcy Proceeding being contested by that Person in good faith by appropriate proceedings so long as enforcement remains stayed, none of the relief sought is granted (either on an interim or permanent basis) and such Bankruptcy Proceeding is dismissed within 30 days of its commencement), or that Person takes corporate, partnership or other internal management action to authorize any of the actions set forth above in this definition.

**“Bankruptcy Proceeding”** means, with respect to any Person, any proceeding contemplated by any application, petition, assignment, filing of notice or other means, whether voluntary or involuntary, under the *Bankruptcy and Insolvency Act* (Canada), the US Bankruptcy Code, the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada), or any other like, equivalent or analogous legislation of any jurisdiction seeking any moratorium, reorganization, adjustment, composition, proposal, compromise, arrangement, administration or other like or similar relief in respect of any or all of the obligations of such Person, seeking the winding up, liquidation or dissolution of such Person or all or any part of its property, seeking any Award declaring, finding or adjudging such Person insolvent or bankrupt, seeking the appointment (provisional, interim or permanent) of any receiver or resulting, by operation of law, in the bankruptcy of such Person.

**“Benefit Plan”** means a defined benefit plan as defined in Section 3(35) of ERISA (other than a Multiemployer Plan or Non-U.S. Employee Benefit Plan) in respect of which any Somerset Group Member or any ERISA Affiliate is, or within the immediately preceding six (6) years was, an “employer” as defined in Section 3(5) of ERISA.

**“Borrower”** means Somerset Entertainment Limited Partnership, existing as at the Effective Time as a limited partnership formed under the laws of the Province of Ontario.

**“Borrower’s Accounts”** means the applicable one of the following accounts of the Borrower maintained by the Borrower at TD, King & Bay Street Branch, Toronto, Ontario, to which payments and transfers to the Borrower under this Agreement are to be made:

**[The bank account information is confidential and has been redacted.]**

or such other accounts of the Borrower maintained with the Swing Line Lender at such branch and marked to such reference as the Borrower, the Swing Line Lender and the Agent agree from time to time as being the accounts to which the payments and transfers to the Borrower pursuant to this Agreement are to be made.

**“Borrower’s Counsel”** means (i) in the Province of Ontario, Goodmans LLP, (ii) in the State of New York, Goodwin Procter LLP, (iii) in each other relevant jurisdiction, such legal counsel of recognized local standing not unacceptable to the Required Lenders as the Borrower may designate as its legal counsel in each such jurisdiction, and (iv) each additional or replacement legal counsel of recognized local standing not unacceptable to the Required Lenders as the Borrower may designate from time to time as its legal counsel.

**“Borrowing”** means a Conversion, Drawdown or Rollover, as the context requires.

**“Borrowing Base”** at any time means an amount equal to the Receivables Borrowing Base minus the aggregate outstanding balance of all Statutory Prior Claims at such time, determined in accordance with the most recent Borrowing Base Report delivered to the Agent pursuant to Subsection 11.1(h) or 14.1.6(c).

**“Borrowing Base Report”** at any time means a report of the Borrower substantially in the form of Schedule 14 (or in such other form as the Agent may accept) signed by a Senior Officer of the Borrower setting out a statement as at such time of (i) the items that comprise the Borrowing Base and (ii) the calculation of the Borrowing Base.

**“Borrowing Date”** means a Conversion Date, Drawdown Date or Rollover Date, as the context requires.

**“Borrowing Request”** means a duly completed and signed notice from the Borrower requesting a Borrowing in the form of Schedule 2 (or in such other form to substantially similar effect as the Agent may accept).

**“BSA”** is used with the defined meaning assigned in Subsection 13.1.29(b).

**“Business Acquisition”** means an acquisition of all or any part of the business of another Person, including any line of business or division and the Business Assets comprised therein, in a single transaction, or in a series of transactions, related or not, whether by acquisition of assets or of Capital Stock of that Person or by way of Business Combination.

**“Business Affairs”** means, in respect of any Person, the Business Assets, liabilities, financial condition, prospects and results of operations of that Person.

**“Business Assets”** means, in respect of any Person, the business, operations, undertaking, property and assets of that Person.

“**Business Combination**” is used with the defined meaning assigned in Subsection 14.2.6.

“**Business Day**” means a day which is not a Saturday or Sunday on which banks are generally open for commercial lending and foreign exchange business in Toronto, Canada and (i) in respect of any Libor Loan in respect of which a payment or Borrowing is due to be made, a New York Banking Day and (ii) in respect of any determination of LIBOR, a London Banking Day.

“**By-laws**” of a Person means the by-laws or other equivalent documents regulating the organization, Control or internal management of the relevant Person.

“**Canadian Dollars**” and the symbol “**CAD**” each means the lawful currency of Canada.

“**Canadian Prime Rate**” on any day means the variable nominal interest rate equal on such day to the percentage rate per annum determined by the Agent (rounded up, if necessary, to be expressed to two (2) decimal places to the nearest 1/100<sup>th</sup> of 1%) to be the greater of (i) the rate of interest which the Reference Lender establishes at that time as the reference rate of interest for determination of the interest rates it will charge for loans made in Canadian Dollars in Canada and which it refers to as its prime rate (or its equivalent or analogous such rate) or (ii) the sum of (A) the yearly rate of interest to which one month CDOR is equivalent plus (B) one percent (1.0%).

“**Canadian Prime Rate Loan**” means an Advance made by way of loan under a Credit Facility in Canadian Dollars upon which the interest rate shall be calculated in accordance with the applicable provisions of this Agreement with reference to the Canadian Prime Rate.

“**Cancellation Notice**” means a duly completed and signed notice from the Borrower in the form of or to substantially similar effect as Schedule 3 (or such other form to substantially similar effect as the Agent may accept).

“**Capital Expenditures**” means (without duplication) any expenditure (whether payable in cash or other property or accrued as a liability) that, in conformity with GAAP, would be required to be classified as a capital expenditure. For certainty, Capital Expenditures includes (i) the cost of assets acquired under capital leases and (ii) expenditures for equipment which is purchased simultaneously with the trade-in of existing equipment owned by any Somerset Group Member, to the extent of the net purchase price of the purchased equipment after giving effect to any trade-in. Capital Expenditures, however, excludes expenditures made in connection with the replacement or restoration of buildings, fixtures or equipment to the extent reimbursed or financed from insurance or expropriation proceeds.

“**Capital Stock**” means (i) common shares, preferred shares or other equivalent equity interests (howsoever designated) of capital stock of a body corporate,

(ii) equity preferred or common membership interests in a limited liability company, (iii) member or shareholder interests in an unlimited company or unlimited liability company, (iv) limited, limited liability or general partnership interests in a limited, limited liability or general partnership, (v) trust units or other beneficial interests in a business, charitable or other trust, (vi) any other interest that confers the right to receive a share of the profits and/or losses of, or the distribution of assets of, any Person and (vii) any other interest equivalent to any of the interests referred to in any of Clauses (i) to (vi) inclusive of this definition.

**“Cash Equivalents”** means (i) short-term obligations of, or fully guaranteed by, the government of the United States of America or Canada, or of a State of the United States of America or of a Province of Canada, in each case having an approved credit rating, (ii) demand or current deposit accounts maintained in the ordinary course of business with a Lender, or with a financial institution having an approved credit rating and (iii) certificates of deposit issued by and time deposits with a Lender or any commercial bank or trust company (whether domestic or foreign) having an approved credit rating; provided in each case that the same has a term not exceeding 12 months, provides for payment of both principal and interest (and not principal alone or interest alone) and is not subject to any contingency regarding the payment of principal or interest (and for certainty, the mere passage of time is not a contingency).

**“Cash Management Agreement”** means an agreement to which any Lender is party providing for cash management services to any Somerset Group Member, including treasury, depository, overdraft, credit or debit card, electronic funds transfers and other cash management services.

**“Cash Management Obligations”** means the Indebtedness and other obligations of each Somerset Group Member owing to each Lender arising under, pursuant to or otherwise in respect of each Cash Management Agreement, including any guarantee thereof or otherwise, and any item or part of any thereof. For certainty, “Cash Management Obligations” shall include interest accruing subsequent to the commencement of, or which would have accrued but for the commencement of, any Bankruptcy Proceeding in accordance with and at the rate (including the Default Rate or other applicable default rate to the extent lawful) specified herein or in the applicable Cash Management Agreement, whether or not such interest is an allowable claim in such Bankruptcy Proceeding.

**“CDOR”** in relation to any specified maturity of bankers’ acceptances on any day means the yearly rate of interest equivalent to the average of the yields (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) applicable to banker’s acceptances denominated in Canadian Dollars for that specified maturity quoted on the Reuters Money Market CDOR page under “Canadian Interbank Bid BA Rates” as of 10:00 a.m. on that day (or on the preceding Business Day, if such day is not a Business Day) or, if such page or service shall cease to be displayed or published, on such other page or service that displays or publishes Canadian interbank bid rates for bankers’ acceptances

denominated in Canadian Dollars as the Agent may select. If no such average is displayed or published on any such page or service, CDOR will be determined by the Agent with reference to the Canadian interbank bid rate (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) quoted by the Reference Lender as being the rate at which the Reference Lender was receiving bids (which it was prepared to accept) to sell its own bankers' acceptances of the specified maturity issued by the Reference Lender in the relevant Canadian money markets as of 10:00 a.m. on such day (or on the preceding Business Day, if such day is not a Business Day).

**“Certificate”** from any Person means a written certificate of that Person signed by a Senior Officer of that Person.

**“Change in Control”** means and shall be deemed to have occurred if any Person or group of Persons “acting in concert” (as contemplated by the *Securities Act* (Ontario) and as interpreted by Applicable Law) shall at any time have acquired direct or indirect beneficial ownership of Voting Capital Stock of the Fund having attributed to it a sufficient number of the outstanding votes attached to all of the issued and outstanding Voting Capital Stock of the Fund to “affect materially the control” (as contemplated by clause (c) of the definition of “distribution” contained in the *Securities Act* (Ontario)) of the Fund; provided that the initial holdings, directly or indirectly, of Capital Stock of the Borrower or the Fund held by either or both of the Management Securityholders (or their Related Persons that are individuals or Affiliates) and the reduction or increase of any such holdings shall not, in and of itself, constitute a Change in Control.

**“Change in Law”** means the introduction of, any change in, or the coming into effect of, any Applicable Law, or any change in the interpretation, administration or application thereof by any Governmental Body, or compliance by any Senior Lender with any Applicable Law.

**“Class A Units”** means Class A limited partnership units of the Borrower.

**“Class B Units”** means Class B limited partnership units of the Borrower.

**“Collateral”** means all property, assets and undertaking (including both real and personal property) in or to which any Credit Party now or hereafter has rights and which is subject to (or intended by the express or implied terms of any Loan Document to be subject to) the Security, or any item or part thereof.

**“Collateral Agent”** means TD acting in its capacity as collateral agent under the Security for and on behalf of itself and the other Secured Parties, or (as the context requires) any replacement for such collateral agent that is appointed pursuant to the Intercreditor Agreement.

**“Commitment”** means a Revolving Commitment, Swing Line Commitment or Term Commitment, as the context requires.

**“Compass”** means Compass Productions, Inc., existing as at the Effective Time as a corporation formed under the laws of the State of Minnesota.

**“Compass Transaction”** means the transactions contemplated by the First Amended Transaction Documents that took place on or prior to the First Amended Closing Date.

**“Compliance Certificate”** in respect of a Test Period means a duly completed and signed Certificate of the Borrower substantially in the form attached as Schedule 9 (or in such other form to substantially similar effect as the Agent may accept) setting out, among other things, a statement for that Test Period of the calculations of the financial tests set out in Section 14.3.

**“Confirmation”** means a confirmation in the form of Schedule 13 (or such other form to substantially similar effect as the Agent may accept) respectively signed by each Credit Party other than the Borrower.

**“Constitutional Documents”** means (i) the articles of incorporation or formation, amendment, amalgamation, continuance or association and the memorandum of association and any unanimous shareholder agreement or limited liability, operating or members’ agreement, as appropriate, or equivalent documents of a Person that is a body corporate governing the incorporation or formation, capacity, powers and Business Affairs of that body corporate, (ii) the partnership agreement or equivalent document governing the formation, capacity, powers and Business Affairs of a Person that is a partnership and (iii) the declaration of trust, trust agreement or equivalent document governing the formation, capacity, powers and Business Affairs of a Person that is a business, charitable or other trust; together, in each case, with the By-laws of the relevant Person.

**“Contaminant”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them that may (i) impair the quality of the Environment for any use that can be made of it, (ii) injure or damage property or plant or animal life, (iii) harm or materially discomfort any Person, (iv) adversely affect the health of any individual, (v) impair the safety of any individual, (vi) render any property or plant or animal life unfit for use by man, (vii) cause loss of enjoyment of normal use of property, or (viii) interfere with the normal course of business, and includes any “contaminant” within the meaning assigned to such term in any Environmental Law.

**“Control”, “Controls” and “Controlled”** when used with respect to any Person, other than an individual, means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of Voting Capital Stock, by contract or otherwise.

**“Control Account Agreement”** means a control account agreement or other agreement amongst the Somerset Group Member concerned, a depository institution or brokerage firm and the Collateral Agent intended to perfect or better

protect the Security in a bank or brokerage account and the property credited or otherwise related thereto.

“**Conversion**” means a conversion of a Loan or an Acceptance pursuant to Section 6.1.

“**Conversion Date**” means any day on which a Conversion takes place.

“**Core Business**” means the production and distribution of music, DVD’s and video products.

“**Courts of Primary Jurisdiction**” means the courts referred to in Subsection 17.15.1(a).

“**Credit Amount**” when used in relation to any outstanding Advance at any time means (i) its aggregate face amount if it is an issue of Acceptances, (ii) its outstanding principal balance if it is a Canadian Prime Rate Loan, (iii) the maximum amount remaining available to be drawn upon under it if it is a Standby Instrument denominated in Canadian Dollars, (iv) the Equivalent Amount in Canadian Dollars of its outstanding principal balance if it is a Libor Loan or US Base Rate Loan, and (v) the Equivalent Amount in Canadian Dollars of the maximum amount remaining available to be drawn upon under it if it is a Standby Instrument denominated in foreign currency.

“**Credit Facilities**” means the Revolving Facility, the Swing Line and the Term Facility.

“**Credit Parties**” means the Borrower and the Guarantors.

“**Debt**” in relation to any Person at any time means liabilities which, in accordance with GAAP, would be classified upon the consolidated balance sheet of that Person prepared as at such time as indebtedness for borrowed money, including, without duplication, bank indebtedness, long-term debt, capital lease obligations and indebtedness to Affiliates and other financial indebtedness. Notwithstanding the foregoing, “Debt” shall include convertible debentures and other like debt instruments which, in accordance with GAAP, would be included in the shareholders, unitholders or partners equity in the consolidated balance sheet of such Person.

“**Default**” means any Event of Default or any default, breach, failure, event, state or condition which, unless remedied or waived, with the lapse of time, giving of notice, making of a determination, or any combination thereof or otherwise, would constitute or could reasonably be expected to result in the occurrence of an Event of Default.

“**Default Rate**” means the rate of interest payable pursuant to Subsection 8.1.4.

“**Derivative**” means any agreement (including any transaction contemplated thereby) now existing or hereafter entered into which is an interest rate swap, cap,

floor or collar agreement, interest rate forward, future or option contract, cross-currency interest rate swap agreement or interest rate future or option contract, a spot or forward foreign exchange contract or any other derivative agreement relative to interest rates, foreign exchange, debt obligations, equities, commodities or other indices.

“**Derivative Exposure**” in relation to any Person (the “relevant party”) and any counterparty of the relevant party at any time means the amount which is or (as the case may be) would be payable by the relevant party to that counterparty, or by that counterparty to the relevant party, as the case may be, pursuant to the agreement governing the Derivatives entered into between them and in effect at that time if those Derivatives have been or (as the case may be) were to be terminated at such time as the result of the default of the relevant party. If the Derivative Exposure is payable by the relevant party to any counterparty of the relevant party, it is referred to herein as “**Out-of-the-Money Derivative Exposure**”. If Derivative Exposure is payable by any counterparty of the relevant party to that relevant party, it is referred to herein as “**In-the-Money Derivative Exposure**”.

“**Designated Person**” is used with the defined meaning assigned to it in Subsection 13.1.29(a).

“**Discount Note**” means a non-interest-bearing promissory note (within the meaning of the *Bills of Exchange Act* (Canada)) or depository note (within the meaning of the *Depository Bills and Notes Act* (Canada)) denominated in Canadian Dollars issued by the Borrower to a Non-Acceptance Lender.

“**Distribution**” means:

- (a) the retirement, redemption, retraction, purchase, or other acquisition by any Somerset Income Fund Group Member of any Capital Stock of any Somerset Income Fund Group Member or any Subordinated Debt;
- (b) the declaration or payment of any dividend, return of capital or other distribution (in cash, securities or other property or otherwise) of, on or in respect of, any Capital Stock of any Somerset Income Fund Group Member or any Subordinated Debt;
- (c) any payment or repayment of or on account of any Subordinated Debt, including in respect of principal, interest, bonus, premium or otherwise; and
- (d) any other payment or distribution (in cash, securities or other property, or otherwise) by any Somerset Income Fund Group Member of, on or in respect of any Capital Stock of any Somerset Income Fund Group Member or any Subordinated Debt;

and the terms “**Distribute**” and “**Distributed**” shall have corresponding meanings.

“**Documentary Credit**” means a documentary or trade letter of credit, including any replacements, renewals and amendments, issued or deemed to be issued by the Swing Line Lender pursuant to this Agreement.

“**DOL**” means the United States Department of Labor and any Person succeeding to the functions thereof.

“**Draft**” means a blank non-interest bearing bill of exchange within the meaning of the *Bills of Exchange Act* (Canada) or a blank depository bill within the meaning of the *Depository Bills and Notes Act* (Canada), as applicable, drawn by the Borrower and addressed to a Lender, made payable to the Borrower, bearer or a clearing house bearing such distinguishing letters and numbers and being in such form as such Lender may require.

“**Drawdown**” means a new Advance which is not derived from a Conversion or Rollover.

“**Drawdown Date**” means any day on which a Drawdown takes place.

“**EBITDA**” of any Person for any Test Period means, subject as otherwise provided in Section 1.7, the amount of the Net Income of that Person for that Test Period adjusted (without duplication) on a consolidated basis as follows:

- (i) the following amounts (without duplication) shall be added to Net Income to the extent they were deducted in computing Net Income, namely: (A) Interest Expense, (B) income taxes, (C) depreciation and amortization expense, (D) non-cash expenses resulting from employee or management compensation, including the grant of stock options or Capital Stock to employees, (E) extraordinary charges, (F) losses realized upon the disposition of capital property, (G) expenses representing the implied interest component under any “synthetic lease” obligations, (H) accrued (but not yet actually incurred) foreign exchange translation losses, (I) losses on the purchase or redemption of securities, (J) goodwill write-downs and (K) if such Test Period ends on or before June 30, 2009, (1) CAD100,000 for legal fees incurred in relation to the proposed acquisition of the Somerset Group by Fluid Music Canada, Inc. during that Test Period, (2) CAD200,000 for the non-refundable fee paid to TD Securities for the fairness opinion prepared in relation to the proposed acquisition of the Somerset Group by Fluid Music Canada, Inc. during that Test Period, and (3) CAD175,000 for consulting fees incurred in relation to a strategic review process conducted during that Test Period;

- (ii) the following amounts (without duplication) shall be deducted from Net Income to the extent they were added in computing Net Income, namely: (A) extraordinary income or gains, (B) gains realized upon the disposition of capital property, (C) accrued (but not yet actually incurred) foreign exchange translation gains, (D) gains on the purchase or redemption of securities and (E) dividends received on Capital Stock of Persons that are not Subsidiaries;
- (iii) the portion of the EBITDA of that Person during such Test Period attributable to any Subsidiaries acquired by that Person during that Test Period (adjusted as provided in clauses (i) and (ii) above) shall be included on a pro forma basis for that Test Period (assuming such acquisition and the incurrence or assumption of any related Indebtedness in connection therewith occurred on the first day of that Test Period); and
- (iv) the portion of the EBITDA of that Person during such Test Period attributable to any Subsidiary disposed of by that Person during that Test Period (adjusted as provided in clauses (i) and (ii) above) shall be excluded on a pro forma basis for that Test Period (assuming such disposition and the repayment of any related Indebtedness in connection therewith occurred on the first day of that Test Period).

**“Effective Time”** means the time the amendment and restatement of the Second Amended Credit Agreement contemplated by this Agreement takes effect in accordance with the provisions of Section 11.2.

**“Eligible Receivables”** means, at any time, the aggregate outstanding balances, net of allowance for credit losses, of all accounts receivable owned by a Somerset Group Member representing unconditional obligations to pay, arising from the provisions of goods and/or services in the ordinary course of carrying on their respective businesses, existing at that time, and as determined in accordance with GAAP; provided however that there shall be excluded from Eligible Receivables the outstanding balance of any account receivable if (i) at that time any amount owing in respect of the relevant account receivable (other than a Pre-Approved Account Receivable) has been outstanding for more than 90 days, (ii) at that time any amount owing in respect of a Pre-Approved Account Receivable has been outstanding for more than 120 days, (iii) the relevant account receivable is from a Related Person in relation to any Somerset Group Member, (iv) the relevant account receivable is subject to dispute or claims of set-off, counterclaim or cross-claim, in which event it shall not be taken into account to the extent of the actual amounts so disputed or claimed, (v) the relevant account receivable is owed by a Person that is not Solvent or is subject to any Bankruptcy Proceeding, (vi) the relevant account receivable is not subject to the Security or (vii) the relevant account receivable is subject to a Lien (other than Liens securing Statutory Prior

Claims) in favour of any other Person (other than the Senior Lenders) which ranks prior to or *pari passu* with the Security.

**“Enforcement Event”** means any of (i) the occurrence of an Event of Default referred to in Subsection 15.1.10, (ii) the declaration by the Agent that the Loan Obligations owing to the Senior Lenders are or have become payable on demand or immediately due and payable before their stated maturity or before the regularly scheduled dates of payment of such Loan Obligations by reason of any Event of Default, (iii) the cancellation or termination of all of the Commitments of the Lenders pursuant to any applicable provision of this Agreement, (iv) the exercise of any set-off rights by any Senior Lender by reason of the occurrence of any Event of Default or (v) the commencement of any enforcement proceedings under or pursuant to any Loan Document by any Senior Lender.

**“Environment”** means the ambient air, all layers of the atmosphere, surface, water, underground water, all land, all living organisms and the interacting natural systems that include components of air, land, water, organic and inorganic matter and living organisms, and includes indoor spaces.

**“Environmental Law”** means any Applicable Law relating to the Environment, Hazardous Materials, Waste or occupational health or safety which applies to the Business Affairs of any particular Person.

**“Equivalent Amount”** on any date means the amount in a specified currency which would result from the conversion of a specified amount in another currency at the Spot Rate.

**“ERISA”** means the *Employee Retirement Income Security Act of 1974* of the United States of America, as amended, and the regulations promulgated and rulings issued thereunder.

**“ERISA Affiliate”** means (a) any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Internal Revenue Code) as the Borrower; (b) a partnership or other trade or business (whether or not incorporated) which is under common control (within the meaning of Section 414(c) of the Internal Revenue Code) with the Borrower, (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Internal Revenue Code) as the Borrower, in each case which are treated as a single employer under Section 414 of the Internal Revenue Code with any corporation described in clause (a) above or any partnership or trade or business described in clause (b) above; and (d) any other Person which is required to be aggregated with the Borrower pursuant to regulations promulgated under Section 414(o) of the Internal Revenue Code.

**“Event of Default”** means any default, breach, failure, event, state or condition described in Section 15.1. An Event of Default which occurs or exists at any time shall be deemed to be continuing at all times thereafter unless it is expressly waived in writing by the Required Lenders, whether or not the default, breach,

failure, event, state or condition that gave rise to such Event of Default is remedied at any time after the Event of Default occurs.

**“Exchange Agreement”** means the exchange agreement dated March 18, 2005 entered into between the Fund, Somerset Trust, the Borrower, Somerset GP and the Management Securityholders.

**“Executive Order”** is used with the defined meaning assigned to it in Subsection 13.1.29(a).

**“Exempt Subsidiary”** is used with the defined meaning assigned to it in Subsection 12.2.2.

**“Federal Funds Rate”** on any day means the percentage rate per annum determined by the Agent to be equal to the weighted average of the interest rates (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) on overnight federal funds transactions with members of the United States Federal Reserve System arranged by federal funds brokers, as published for such day (or for the preceding New York Banking Day, if such day is not a New York Banking Day) by the Federal Reserve Bank of New York, or if such rate is not so published for any day which is a New York Banking Day, the average (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) of the quotations at approximately 10:00 a.m. on such day (or for the preceding New York Banking Day, if such day is not a New York Banking Day) on such transactions received by the Agent from three (3) federal funds brokers of recognized standing selected by the Agent.

**“Fees”** means any agency fees, Stamping Fees, Standby Fee, Standby Instrument Fees and all other fees payable by the Borrower to the Senior Lenders pursuant to or otherwise in respect of this Agreement, including pursuant to the Third Fee Letter.

**“Final Judgment”** means a final Award from which no appeal may be made or the applicable appeal periods have lapsed without any appeal therefrom having been perfected.

**“Financial Hedge Agreements”** means Derivatives entered into by a Somerset Group Member in order to protect or hedge such Somerset Group Member against fluctuations in interest rates or currency exchange rates and not for speculative purposes.

**“First Amended Closing Date”** means December 13, 2005.

**“First Amended Credit Agreement”** is used with the defined meaning assigned to it in the Background to this Agreement.

**“First Amended Prospectus”** means the final prospectus dated December 5, 2005 qualifying the distribution of 4,200,000 units of the Fund, without regard to any change thereto.

**“First Amended Transaction Documents”** means the Principal Agreements and the First Amended Prospectus.

**“Fiscal Quarter”** means one of the four (4) three-month accounting periods of the Borrower comprising a Fiscal Year.

**“Fiscal Year”** means the 12 month accounting period of the Borrower which, as at the Effective Time, ends on December 31<sup>st</sup> of each calendar year.

**“Fixed Charge Coverage Ratio”** for any Test Period means, subject as otherwise provided in Section 1.7, the ratio for that Test Period of (i) the amount by which (A) the sum of (1) EBITDA of the Borrower plus (2) the aggregate total amount of all Rents paid by each Somerset Group Member plus (3) the aggregate total amount of all extraordinary expenses incurred by each Somerset Group Member which are not being capitalized and are related to new program roll-outs to the extent the Required Lenders have agreed to such inclusion in the determination of this ratio exceeds (B) the sum of (1) Income Taxes actually paid in cash by each Somerset Group Member plus (2) the amount of all Non-financed Capital Expenditures of each Somerset Group Member incurred plus (3) the aggregate amount of all Distributions made by each Somerset Group Member to each Person that is not a Somerset Group Member divided by (ii) the sum of (A) Interest Expense plus (B) the total sum of all scheduled principal payments of Indebtedness (excluding the principal amount of each Credit Facility due and payable on its respective Maturity Date) of each Somerset Group Member plus (C) the aggregate amount of all Rents paid by each Somerset Group Member; all determined on a consolidated basis.

**“Floating Rate”** means the Canadian Prime Rate or US Base Rate, as the context requires.

**“Floating Rate Loan”** means a Canadian Prime Rate Loan or US Base Rate Loan, as the context requires.

**“Fund”** means Somerset Entertainment Income Fund, existing as at the Effective Time as an unincorporated, open-ended, limited purpose mutual fund trust established under the laws of the Province of Ontario.

**“Fund Declaration of Trust”** means the amended and restated declaration of trust dated March 18, 2005 between Andrew Burgess and Gordon Gibson and 1306967 Ontario Limited.

**“Fund Documents”** means the Note Indenture, the Exchange Agreement, the Trust Declaration of Trust, the Fund Declaration of Trust and the Limited Partnership Agreement.

“**GAAP**” means generally accepted accounting principles determined in accordance with Section 1.7.

“**Governmental Body**” means any international tribunal, agency, body, commission or other authority (including that of any union of nations), any government, executive, parliament, legislature or local authority, or any governmental body, ministry, department or agency or regulatory authority, court, tribunal, commission or board of or within Canada, the United States of America or any other foreign jurisdiction, or any political subdivision of any thereof or any authority having jurisdiction therein.

“**Guarantee**” means a guarantee of, *inter alia*, the Secured Obligations of the Borrower duly completed and executed by a Somerset Income Fund Group Member in favour of the Senior Lenders substantially in the form agreed between the Borrower and the Required Lenders at or before the Effective Time (or in such other form to substantially similar effect as the Agent may accept).

“**Guarantors**” at any time means (i) Somerset Canada, (ii) Somerset US, (iii) Somerset GP, (iv) Somerset Trust, (v) the Fund and (vii) each additional Somerset Income Fund Group Member that has at or before such time granted a Guarantee pursuant to this Agreement.

“**Hazardous Materials**” means any pollutant or Contaminant, including any hazardous, dangerous, registrable or toxic chemical, material or other substance within the meaning of any Applicable Law, including urea formaldehyde foam type of insulation, asbestos or asbestos containing materials, polychlorinated biphenyls (PCB’s) or PCB contaminated fluids.

“**Hedge Provider**” means a financial institution referred to in Section 10.1 that enters into an Accession Agreement pursuant to Section 10.2.

“**Holding Body Corporate**” of any Person means another Person that Controls that Person.

“**Hostile Take-Over Bid**” means a Take-Over Bid by any Somerset Income Fund Group Member or in which any Somerset Income Fund Group Member is involved, in respect of which the board of directors (or equivalent governing body) of the target entity has recommended against acceptance of such Take-Over Bid to the target entity’s Capital Stock holders or which is similarly opposed or contested.

“**Immaterial**” means does not, and could not reasonably be expected to, have a Material Adverse Effect.

“**Income Taxes**” means taxes based on or measured by income or profit of any nature or kind, including Canadian federal and provincial income taxes and similar such taxes imposed by any foreign jurisdiction (including any union of nations).

**“Indebtedness”** of any Person at any time means obligations of such Person or any of its Subsidiaries (without duplication) to pay (in whole or in part) any of the following amounts at such time:

- (a) Debt;
- (b) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of, any bankers’ acceptance;
- (c) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of any sale of promissory notes, sale of accounts, factoring, securitization or discounting arrangement to the extent recourse to such Person or any Subsidiary of it exists to recover such amounts payable;
- (d) the principal amount of, and any premiums and capitalized interest payable in respect of, indebtedness for the deferred purchase price of property or services;
- (e) the principal amount of, and any premiums and capitalized interest payable in respect of, indebtedness payable under or in respect of any Lien upon any property acquired (whether or not assumed);
- (f) Out-of-the-Money Derivative Exposure;
- (g) amounts payable, actual or contingent, primary, secondary or by way of guarantee, matured or unmatured, under, by reason of or otherwise in respect of, any (i) standby credit, bank guarantee or performance bond issued to secure obligations that do not constitute trade obligations incurred in the ordinary course of conducting day-to-day business, (ii) Sale/Lease-Back Transaction or (iii) so-called “synthetic lease” transaction;
- (h) the redemption or retraction price of any Preferred Shares;
- (i) the capital portion of any other obligation that is not Debt having the commercial effect of borrowing; and
- (j) any amount payable under any direct or indirect guarantee of any amount of the nature described in any of paragraphs (a) to (i) above.

For certainty, reserves for deferred taxes or general contingencies, current trade payables which are payable on customary or usual trade terms, current expenses (other than interest expense) accrued in the ordinary course of conducting business and current payments under operating leases (other than leases referred to in paragraph (g) above), for any current fiscal period, and customer advance payments and deposits received in the ordinary course of conducting day-to-day business, are not Indebtedness. Wherever in this Agreement, the amount of any

Indebtedness is required to be determined or measured, the amount of any Indebtedness referred to in any of Clauses (ii) and (iii) of paragraph (g) above shall be equal to the amount obtained by aggregating the present values of each amount payable under or otherwise in respect thereof at the discount rate which would be applied under GAAP if such Indebtedness were a capital lease.

**“Intellectual Property Rights”** means all trade secrets, confidential information and know-how, Software, patents, trade marks, patent or trade mark rights, registrations and applications, designs, logos, indicia, trade names, corporate names, company names, business names, trade styles, business identifiers, fictitious business names or characters, copyrights, copyright applications, integrated circuit topography rights, registrations and applications, semiconductor chip rights, design rights, registrations and applications, design patents and other industrial designs, goodwill, letters patent and other industrial or intellectual property of whatever kind in which any Somerset Group Member now or hereafter has rights, and any item or part thereof, and each and every such right.

**“Intercreditor Agreement”** means the Intercreditor Agreement entered into between the Agent and the Hedge Providers in form and substance satisfactory to the Senior Lenders.

**“Interest Expense”** for any Test Period means the total consolidated interest expense of the Somerset Group for that Test Period determined on a consolidated basis, including dividends on Preferred Shares and all but the principal component of rentals in respect of capital leases, adjusted (to the extent applicable) in accordance with the net payments made by each Somerset Group Member pursuant to Financial Hedge Agreements, and including interest expense actually paid in cash (as opposed to Capital Stock) attributable to convertible debentures and other like instruments which, in accordance with GAAP, would be included in partner equity in the consolidated balance sheet of the Borrower, but excluding (i) amortization of deferred financing costs and any other amounts of non-cash payments of interest and (ii) interest payable on Subordinated Debt.

**“Interest Payment Date”** means:

- (a) with respect to each Floating Rate Loan or any amount on which interest is payable under Subsection 8.1.4 and any period of time elapsed in any calendar month, the third (3<sup>rd</sup>) Business Day of the immediately following calendar month; and
- (b) with respect to each Libor Loan, the last day of each Interest Period applicable to it and, with respect to each Libor Loan with an Interest Period longer than three (3) months, each day that falls every three (3) months after commencement of that Interest Period (or the next following Business Day if any such day is not a Business Day) during that Interest Period.

“**Interest Period**” for any Libor Loan means the period of one (1), two (2), three (3) or six (6) months, as selected by the Borrower in a Borrowing Request commencing on each Borrowing Date of such Libor Loan; provided that any Interest Period which would otherwise end on a day which is not a Business Day shall be extended or shortened in accordance with the Modified Following Business Day Convention.

“**Internal Revenue Code**” means the *Internal Revenue Code of 1986* of the United States of America, as amended, and any regulations or guidance promulgated thereunder.

“**Investment**” means any loan, advance (other than commission, travel and similar advances to officers and employees made in the ordinary course of business), extension of credit (other than accounts receivable on customary or usual terms arising in the ordinary course of business) or contribution of capital to any other Person or any acquisition of Capital Stock, deposit accounts, certificates of deposit, mutual funds, bonds, notes, debentures or other securities of any other Person or any structured notes or Derivatives. Whenever in this Agreement the amount of any Investment is required to be determined or measured such amount shall be the original principal or capital amount thereof, less all returns of principal or equity thereof, but not interest, dividends or other distributions of income paid thereon, and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment, as determined in good faith by the Borrower and confirmed by the Auditors.

“**IP License**” means a license of a right to use Intellectual Property Rights.

“**IRS**” means the Internal Revenue Service of the United States of America and any Person succeeding to the functions thereof.

“**ISDA**” means the International Swaps and Derivatives Association, Inc.

“**Issuing Bank**” in relation to a Standby Instrument means the Lender that issued, was deemed to have issued or is to issue (as the context requires) that Standby Instrument pursuant to this Agreement.

“**Lender**” means (i) each Person listed as a Lender in the signature pages to this Agreement and (ii) each immediate and subsequent Transferee of each Person referred to in Clause (i) of this definition relative to its rights and obligations as a Lender under any of the Credit Facilities.

“**Lenders’ Counsel**” means (i) in the Provinces of Alberta, British Columbia, Ontario and Quebec, the firm of Fasken Martineau DuMoulin LLP, (ii) in the United States of America, Kaye Scholer LLP, (iii) in each other relevant jurisdiction, such local legal counsel as the Agent may designate as the Lenders’ legal counsel in that jurisdiction and (iv) in each case, such replacement or

additional firm as the Agent may designate from time to time as the Lenders' legal counsel.

**“Lending Office”** of a Lender means the office of that Lender which that Lender notifies to the Agent from time to time as being the office to and from which notices and payments to and by it are to be made pursuant to this Agreement.

**“Letter of Guarantee”** means a bank guarantee, including any replacements, renewals and amendments issued or deemed issued by a Lender pursuant to this Agreement.

**“LIBOR”** for each Interest Period of each Libor Loan means the percentage rate per annum equal to the offered quotation which appears on the page of the Reuters Screen which displays or publishes the British Bankers' Association Interest Settlement Rate for US Dollar deposits (being currently “LIBOR01”) for such Interest Period as of 11:00 a.m. (London, England time) on the Quotation Date for such Interest Period and for a period similar to such Interest Period or, if such page or such service shall cease to be displayed or published, such other page or such other service for the purpose of displaying or publishing the British Bankers' Association Interest Settlement Rate for US Dollar deposits as the Agent shall select. If no quotation for US Dollar deposits for any Interest Period is displayed or published to permit the Agent to determine LIBOR in accordance with the foregoing, LIBOR will be determined by the Agent with reference to the rate of interest (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) quoted by the Reference Lender as the rate at which the Reference Lender was offering US Dollar deposits in a representative amount to prime banks in the London interbank market for such Interest Period as of 11:00 a.m. (London, England time) on the Quotation Date for such Interest Period.

**“Libor Loan”** means an Advance made by way of loan in United States Dollars under the Revolving Facility or Term Facility upon which interest shall be calculated in accordance with the applicable provisions of this Agreement with reference to LIBOR.

**“Lien”** means (i) any right of set-off intended to secure the payment or performance of an obligation, (ii) any interest in property created by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, hire purchase agreement, conditional sale agreement, Sale/Lease-Back Transaction, deposit arrangement, title retention, capital lease or discount, factoring or securitization arrangement on recourse terms, (iii) any statutory deemed trust or lien, (iv) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment or other encumbrance which binds property and (v) any agreement to grant any of the foregoing rights or interests described in Clauses (i) to (iv) of this definition.

**“Limited Partnership Agreement”** means the amended and restated limited partnership agreement of Somerset Entertainment Limited Partnership made as of

November 7, 2006 among Somerset GP, Somerset Trust, Fontainebleu Investments Ltd. and Whiskey Jack Creek Ltd.

“**Lists**” is used with the defined meaning assigned in Subsection 13.1.29(a).

“**Litigation**” means any grievance, investigation, litigation, legal action, lawsuit, mediation, alternative dispute resolution proceeding or other proceeding (whether civil, administrative, quasi-criminal or criminal) by or before any Governmental Body, arbitrator or other decision-making authority.

“**Loan**” means a Libor Loan or Floating Rate Loan, as the context requires.

“**Loan Documents**” means, collectively, this Agreement, each Guarantee, the Security Documents, the Third Fee Letter, the Post-Closing Undertaking, the Intercreditor Agreement, each Accession Agreement and each other agreement, document or instrument delivered to or for the benefit of the Senior Lenders pursuant to or otherwise in connection with any of this Agreement, any Guarantee, the Security Documents, the Third Fee Letter and the Post-Closing Undertaking.

“**Loan Obligations**” means the Indebtedness and other obligations of each Credit Party owing to each Senior Lender arising under, pursuant to or otherwise in respect of each Loan Document, and any item or part of any thereof, but excluding Indebtedness, arising under any Guarantee or otherwise, to the extent it solely relates to any Cash Management Agreement or Treasury Agreement. For certainty, “Loan Obligations” shall include interest accruing subsequent to the commencement of, or which would have accrued but for the commencement of, any Bankruptcy Proceeding in accordance with and at the rate (including the Default Rate to the extent lawful) specified herein or in another applicable Loan Document, whether or not such interest is an allowable claim in such Bankruptcy Proceeding.

“**Loan Transfer Agreement**” is used with the defined meaning assigned in Subsection 17.10.4.

“**London Banking Day**” means a day which is not a Saturday or Sunday on which dealings by and between banks in US Dollar deposits may be transacted in the London interbank market.

“**Majority Lenders**” at any time means at least two (2) Lenders who are Unrelated Parties and whose Commitments collectively amount to (a) at least 66-2/3% of the Total Commitment if no Enforcement Event has occurred or (b) at least 66-2/3% of the Total Commitment immediately before the time the Enforcement Event occurs if an Enforcement Event has occurred.

“**Management Securityholders**” means (i) Fontainebleau Investments Ltd., existing as at the Original Closing Date as a corporation incorporated under the laws of the Province of Ontario and controlled by Andy Burgess, the Chief

Executive Officer of Somerset, and (ii) Whiskey Jack Creek Ltd., existing as at the Original Closing Date as a corporation incorporated under the laws of the Province of Ontario and controlled by Gordon Gibson, the Executive Producer of Somerset.

**“Material Adverse Change”** means any change, effect, event, occurrence or change in condition or fact, that has, or could reasonably be expected to have, a Material Adverse Effect.

**“Material Adverse Effect”** means an effect which:

- (a) impairs, in a material adverse way, any Credit Party’s ability to perform its Loan Obligations;
- (b) prejudices, restricts or renders unenforceable or ineffective, in a material adverse way, any Guarantee or other Security or any of the rights intended or purported to be granted under or pursuant to any Loan Document by any Credit Party to or for the benefit of the Senior Lenders;
- (c) results in a material adverse change in any of the Business Affairs of the Somerset Group measured as a whole; or
- (d) results in a loss, diminution or destruction of any substantial part of the Business Assets (either physically or in value) of any Credit Party by an amount of at least the Threshold Amount which is not substantially compensated for by insurance or expropriation proceeds.

The final determination as to whether or not any particular effect is a Material Adverse Effect will be made by the Required Lenders acting in good faith.

**“Material IP License”** means any IP License that requires payments by or to any Somerset Group Member of more than the Threshold Amount per annum.

**“Material Intellectual Property Rights”** means any item of Intellectual Property Rights that generates revenues to the Somerset Group of more than the Threshold Amount per annum.

**“Material Leaseholds”** means those leases by any Somerset Group Member of premises from which any Somerset Group Member carries on business and to which revenues in excess of the Threshold Amount per annum are attributed or on which Business Assets are located having a value in excess of the Threshold Amount.

**“Material Warehouse Facilities”** means those premises (other than leasehold or freehold premises of any Somerset Group Member) at which property of any Somerset Group Member having a value in excess of the Threshold Amount is stored, warehoused or otherwise located.

**“Maturity Date”** means the Revolving Facility Maturity Date, Swing Line Maturity Date or Term Facility Maturity Date, as the context requires.

**“Modified Following Business Day Convention”** means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day so that such relevant date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that relevant date will be the first preceding day that is a Business Day.

**“Multiemployer Plan”** means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA which is, or within the immediately preceding six (6) years was, contributed to by any Somerset Group Member or any ERISA Affiliate.

**“Net Acceptance Proceeds”** means the cash proceeds realized on the issuance and sale of an Acceptance pursuant to this Agreement after deduction of the Stamping Fee.

**“Net Income”** of any Person for any period of time means the amount of the consolidated net income of that Person for that period of time determined in accordance with GAAP.

**“New Loan Documents”** means this third amended and restated credit agreement and the Confirmation.

**“New York Banking Day”** means a day which is not a Saturday or Sunday on which banks generally are open for the conduct of commercial lending and foreign exchange business in New York City.

**“Non-Acceptance Lender”** has the defined meaning assigned to it in Section 5.10.

**“Non-financed Capital Expenditures”** means Capital Expenditures to the extent they have been paid for in cash which was not derived from the proceeds of any Indebtedness (other than Indebtedness under this Agreement), including the principal component of rentals in respect of capital leases.

**“Non-US Employee Benefit Plan”** means any employee benefit plan as defined in Section 3(3) of ERISA which is maintained or contributed to for the benefit of the employees or former employees of any Somerset Group Member or any employee benefit plan in relation to which any Somerset Group Member has a liability or potential liability, but which is not covered by ERISA pursuant to Section 4(b)(4) of ERISA.

**“Non-US Pension Plan”** means any Non-US Employee Benefit Plan which is a pension plan as defined in Section 3(2) of ERISA but which is not covered by ERISA pursuant to Section 4(b)(4) of ERISA and which under applicable local law is required to be funded through a trust or other funding vehicle other than a

trust or funding vehicle maintained by a Governmental Body and includes a “pension plan” or “plan” which is subject to the funding requirements of the *Pension Benefits Act* (Ontario) or applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada of any Somerset Group Member.

“**Note**” means any promissory note issued at the request of a Lender pursuant to Subsection 17.7.2 substantially in the form of Schedule 11.

“**Note Indenture**” means the note indenture dated March 18, 2005 entered into between Somerset Trust and Computershare Trust Company of Canada governing the Trust Notes.

“**OFAC**” is used with the defined meaning assigned in Subsection 13.1.29(a).

“**OFAC Laws and Regulations**” is used with the defined meaning assigned in Subsection 13.1.29(a).

“**Order**” means any order, directive, direction or request of any Governmental Body, arbitrator or other decision-making authority of competent jurisdiction.

“**Original Closing Date**” means March 18, 2005.

“**Original Credit Agreement**” is used with the defined meaning assigned to it in the Background to this Agreement.

“**Original Principal Agreements**” means the Original Purchase Agreement, the Note Indenture, the Trust Notes and the Exchange Agreement.

“**Original Prospectus**” means the final prospectus dated March 11, 2005 qualifying the distribution of 9,600,000 units of the Fund, without regard to any change made thereto.

“**Original Purchase Agreement**” means the Investment and Acquisition Agreement dated March 11, 2005 among, *inter alia*, the Borrower, the Fund, Somerset Trust, Somerset GP and the Management Securityholders.

“**Original Transaction**” means the transactions contemplated by the Original Transaction Documents to take place on or prior to the Original Closing Date, including the Amalgamation.

“**Original Transaction Documents**” means the Original Principal Agreements and the Original Prospectus.

“**Participant**” is used with the defined meaning assigned in Subsection 17.10.3.

“**Participating Capital Stock**” means Capital Stock of a Person which carries rights to distribution of profits or gains realized by that Person and to the assets of such Person on dissolution or winding-up.

**“Payment in Full”** in relation to any Secured Obligations owing to any Senior Lender means permanent, indefeasible and irrevocable payment in cash (or other freely available funds transfer as may be expressly provided for in the Secured Documents) to that Senior Lender in full of such Secured Obligations owing to that Senior Lender in accordance with the express provisions of the Secured Documents, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any bankruptcy, insolvency or other similar such laws, any law affecting creditors’ rights generally or general principles of equity, and the cancellation or expiry of all Commitments or other obligations to extend credit or assume financial risk; and **“paid in full”** shall (to the extent the context so admits) be construed in like manner.

**“PBGC”** means the United States Pension Benefit Guaranty Corporation and any Person succeeding to the functions thereof.

**“Period End Date”** means the last day of an Interest Period of a Libor Loan or of the Term of an issue of Acceptances, as the context requires.

**“Permitted Distribution”** means:

- (a) in relation to the Borrower, a cash Distribution that is made by the Borrower in accordance with the terms of the Limited Partnership Agreement and this Agreement;
- (b) in relation to Somerset Trust, a cash Distribution that is made by Somerset Trust in accordance with the terms of the First Amended Transaction Documents and this Agreement and, which does not exceed the proceeds of the corresponding cash Distribution received by Somerset Trust from the Borrower referred to in clause (a) above;
- (c) in relation to Somerset Trust, a redemption by Somerset Trust of outstanding trust units of Somerset Trust and Series 1 Trust Notes of the Trust, the sole consideration of which is the issuance by Somerset Trust of Series 2 Trust Notes and Series 3 Trust Notes; and
- (d) a cash Distribution made by a Wholly-Owned Subsidiary of the Borrower to the Borrower or to another Wholly-Owned Subsidiary of the Borrower;

provided, however, that in each case, other than clause (c) above, a Distribution shall be deemed not to be a Permitted Distribution if a Default shall have occurred and be continuing at the time such Distribution is made, or would occur, or could reasonably be expected to occur, upon or following such Distribution taking place.

**“Permitted Investments”** means Investments which are made by any Somerset Group Member pursuant to and in accordance with Subsection 14.2.8.

**“Permitted Liens”** means:

- (a) liens in respect of Statutory Prior Claims, but only if the obligations secured by such liens are paid when due;
- (b) liens for assessments or governmental charges or levies which are paid when due or, if overdue, the validity or amount of which is being contested in good faith by appropriate proceedings and in respect of which adequate steps have been taken (which may include cash being paid to or pledged with the relevant Governmental Body) to prevent penalties from being imposed, interest from accruing and the commencement or continuation of enforcement proceedings and adequate reserves in accordance with GAAP have been recorded on the consolidated balance sheet of the Borrower;
- (c) construction, mechanics’, carriers’, warehousemen’s, storage, repairers’ and materialmen’s liens but only if the obligations secured by such liens are paid when due and no Lien has been registered against any Business Assets of any Somerset Group Member or if a Lien has been registered, same is being vigorously defended in good faith by appropriate proceedings and appropriate steps have been taken to prevent any disposal of such Business Assets;
- (d) easements, encroachments, rights of way, servitudes, restrictive covenants or other similar rights in land granted to or reserved by other Persons, rights of way for sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties, which easements, encroachments, rights of way, servitudes, restrictive covenants, other similar rights and restrictions do not, in the aggregate, impair the conduct of the business of any Somerset Group Member or impair the validity, priority or realizable value of the Security;
- (e) the right (so long as it is not exercised) reserved to or vested in any Governmental Body by the terms of any Authorization acquired by any Somerset Group Member or by any statutory provision, to terminate any such Authorization, or to require annual or other periodic payments as a condition of the continuance thereof or to distraint or obtain a charge on any Business Asset of any Somerset Group Member in the event of a failure to make such annual or periodic payments or to comply with the terms thereof;
- (f) any rights of expropriation, condemnation, access or user or other similar such rights conferred or vested on public authorities by or under statutes of Canada or any foreign jurisdiction or any political subdivision of any thereof, provided they are not exercised;
- (g) the reservations, limitations, provisos and conditions, if any, expressed in any original grants from the Crown;

- (h) defects or irregularities in title which are of a minor nature and which do not, and could not reasonably be expected to, in the aggregate materially impair the value or the use of any Business Assets affected thereby for the purposes for which it is held by any Somerset Group Member;
- (i) all applicable governmental orders, laws, bylaws and regulations which have been complied with in all respects or any contraventions of which do not, and could not be reasonably expected to, adversely affect the use or intended use of any Business Assets of any Somerset Group Member;
- (j) liens arising from court or arbitral proceedings, provided that the claims secured thereby are being contested in good faith by the relevant Somerset Group Member, execution thereon has been stayed and continues to be stayed and such liens do not, in the aggregate, detract from the value of any material Business Asset of any Somerset Group Member or impair the use thereof in the conduct of business of any Somerset Group Member other than in a manner that is Immaterial;
- (k) deposits of cash securities in connection with any appeal, review or contestation of any security or lien, or any matter giving rise to any security or lien, described in paragraph (j) above;
- (l) any agreement or arrangement pursuant to which a Somerset Group Member pledges cash to any insurer, guarantor, third party contractor, public utility or Governmental Body made in the ordinary course of business to secure the performance of bids, tenders, contracts (other than contracts of Indebtedness), leases, customs duties and other similar obligations;
- (m) liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of combination of accounts or similar rights in the ordinary course of conducting day-to-day banking business in relation to deposit accounts or other funds maintained with a creditor depository institution (collectively, "Banker's Liens") provided that such Banker's Liens (A) do not relate to any deposit account that is a dedicated cash collateral account which is subject to restrictions against access by the depositor or account holder, (B) do not relate to any deposit account intended by the depositor or account holder to provide collateral to the depository institution, and (C) are not intended directly or indirectly to secure the payment or performance of Indebtedness or any other obligation;
- (n) the reversionary interests of landlords or sub-landlords under operating leases or subleases of real property (that are not capital leases and do not create Indebtedness) with a Somerset Group Member as tenant or subtenant;

- (o) the tenancy rights of tenants under operating leases of real property (that are not capital leases and do not create Indebtedness) with a Somerset Group Member as landlord;
- (p) the interests (including Liens in the property leased and any insurance related thereto) of lessors under operating leases of personal property (that are not capital leases and do not create Indebtedness);
- (q) Liens over specific items of property (as opposed to Liens over all or any substantial part of the undertaking, property and assets of a Somerset Group Member), excluding the Capital Stock of any Somerset Group Member, in favour of Unrelated Parties securing Indebtedness outstanding at any time for the entire Somerset Group in an aggregate amount not exceeding the Threshold Amount;
- (r) the Liens created by the Security and any other Liens created in favour of the Senior Lenders; and
- (s) such other Liens securing such obligations as may be approved by the Required Lenders from time to time.

**“Person”** means an individual, corporation, company (limited, unlimited, unlimited liability or other), limited liability corporation, other body corporate, estate, limited, limited liability or general partnership, trust, trustee, joint venture, other legal entity, unincorporated association or Governmental Body.

**“Plan”** means an employee benefit plan defined in Section 3(3) of ERISA in respect of which any Somerset Group Member or any ERISA Affiliate is, or within the immediately preceding six (6) years was, an “employer” as defined in Section 3(5) of ERISA.

**“Pre-Approved Account Receivable”** means an account receivable owned by a Somerset Group Member representing an unconditional obligation to pay, arising from the provisions of goods and/or services in the ordinary course of carrying on its respective business, existing at that time, and as determined in accordance with GAAP provided that such account receivable is owing by a company that has a public debt rating of (i) BBB+ or better by Standard & Poor’s Rating Services, a division of McGraw-Hill Inc., or (ii) Baa1 or better by Moody’s Investor Service Inc.

**“Preferred Shares”** means Capital Stock of a specified Person (i) that may be redeemed by that Person, (ii) that is retractable at the option of the holder or (iii) which that Person or any Affiliate of it may be required to purchase or otherwise acquire; in each case, before or within 12 months after the latest of the three (3) Maturity Dates; provided that for the purposes of the definitions of “Indebtedness” and “Interest Expense” the Class B Units held by the Management Securityholders shall not constitute Preferred Shares.

**“Principal Agreements”** means the Acquisition Agreement - Compass, the Note Indenture and the Trust Notes.

**“Quotation Date”** means, (i) in relation to any Interest Period, the day on which quotations would ordinarily be given by prime banks in the London interbank market for deposits in US Dollars for delivery on the first day of that Interest Period and (ii) in relation to any Term, the day on which quotations would ordinarily be given by banks listed in Schedule I, II and III of the *Bank Act* (Canada) for bid rates for bankers’ acceptances issued by them on the first day of such Term; provided that, if, for any such Interest Period or Term, quotations would ordinarily be given on more than one date, the Quotation Date for that Interest Period or Term shall be the last of those dates. As at the Effective Time, (A) the Quotation Date for an Interest Period relating to a Libor Loan is two (2) London Banking Days’ prior to the first day of that Interest Period and (B) the Quotation Date for the Term of an issue of Acceptances is the first day of that Term.

**“Rateable Share”** of any Lender means:

- (a) in relation to any outstanding Advance, or any interest or Fees payable in relation thereto, the proportion borne by such Lender’s share of the Advance to the full amount of such Advance;
- (b) in relation to the Revolving Facility, or any Fees payable in relation thereto, the proportion borne by such Lender’s Revolving Commitment to the Total Revolving Commitment;
- (c) in relation to the Term Facility, or any Fees payable in relation thereto, the proportion borne by such Lender’s Term Commitment to the Total Term Commitment; and
- (d) in relation to Sections 16.13, 16.23 and 16.26 or any other matter not referred to in paragraphs (a), (b) and (c) of this definition, the proportion borne by all such Lender’s Commitments to the Total Commitment determined (i) at that time if no Enforcement Event has occurred or (ii) immediately before the Enforcement Event occurred if an Enforcement Event has occurred.

**“Receivables Borrowing Base”** at any time means an amount equal to seventy-five percent (75%) of the face amount of all Eligible Receivables owing by account debtors located in Canada or the continental U.S.A.; all as determined from the most current Borrowing Base Report. In determining the Receivables Borrowing Base, accounts receivable denominated in foreign currency will be calculated at their Equivalent Amount in Canadian Dollars at the date of determination.

**“Reference Lender”** means TD (or any Affiliate of it nominated by TD) acting in its capacity as reference lender in relation to the Credit Facilities, or (as the

context requires) any replacement for such reference lender appointed pursuant to Subsection 16.16.2.

“**Refinanced Loans and Acceptances**” is used with the defined meaning assigned in Section 4.3.

“**Registration**” means any notice to or filing, recording or registration with any Governmental Body having jurisdiction with respect to any specified Person, transaction or event, or any of such Person’s Business Affairs; and “**register**” shall (to the extent the context so admits) be construed in like manner.

“**Regulation U**” means Regulation U of the Board of Governors of the US Federal Reserve System as from time to time in effect.

“**Regulation X**” means Regulation X of the Board of Governors of the US Federal Reserve System as from time to time in effect.

“**Related Person**” in relation to any Person (the “**relevant party**”) means any other Person (i) that, directly or indirectly, Controls, is Controlled by or is under common Control with, the relevant party, (ii) that beneficially owns or Controls ten percent (10%) or more of the Voting Capital Stock or Participating Capital Stock, on an undiluted or a fully diluted basis, of the relevant party, (iii) of which ten percent (10%) or more of the Voting Capital Stock or Participating Capital Stock, on an undiluted basis or a fully diluted basis, is beneficially owned or Controlled by the relevant party or (iv) that is a Senior Officer or director of the relevant party or any Person referred to in any of Clauses (i), (ii) and (iii) of this definition, or that is a Person that does not deal at arm’s length with any such Senior Officer or director.

“**Rents**” means amounts payable by any Somerset Group Member under operating leases or other agreements granting the right to use any property of another Person which do not constitute Indebtedness.

“**Repayment Notice**” means a duly completed and signed notice from the Borrower in the form of Schedule 4 (or in such other form to substantially similar effect as the Agent may accept).

“**Reportable Event**” means the occurrence of any of the events described in Section 4043(c) of ERISA other than an event for which the notice requirement is waived by the regulations thereunder.

“**Representative**” of any Person means any director, officer, employee, agent, legal counsel, accountant, financial advisor, expert, manager, consultant or other representative appointed, engaged or employed by such Person or holding a power of attorney (*fondé de pouvoir*) granted to it by such Person, and includes any trustee of any Person that is a trust.

**“Required Lenders”** means the Majority Lenders, except for those matters specified in Subsections 16.19.2 and 16.19.3, in which case it means those Senior Lenders stipulated in those Subsections.

**“Revolving Commitment”** of any Revolving Lender means the maximum portion of the Revolving Facility which such Revolving Lender has agreed to make available to the Borrower as set out opposite its name under the “Revolving Commitment” column in Schedule 1, or as set forth in any Loan Transfer Agreement, as such amount may be changed from time to time pursuant to the provisions of this Agreement.

**“Revolving Facility”** means the three year revolving facility established by the Revolving Lenders in favour of the Borrower under Article 2.

**“Revolving Facility Maturity Date”** means October 14, 2011 or, if such date is not a Business Day, the preceding Business Day.

**“Revolving Lender”** means a Lender that has agreed to make available to the Borrower a portion of the Revolving Facility under this Agreement.

**“Rollover”** means (i) the continuation on the Period End Date of an outstanding Libor Loan (or a portion thereof) for another Interest Period or (ii) a new issue of Acceptances on the Period End Date of an outstanding issue of Acceptances in an aggregate face amount equal to the Credit Amount of such outstanding issue of Acceptances (or a portion thereof) provided that the entire Net Acceptance Proceeds derived from such new issue of Acceptances are used to pay, to the extent thereof, such maturing outstanding issue of Acceptances (or portion thereof, as the case may be).

**“Rollover Date”** means a Business Day on which a Rollover of all or a portion of a Libor Loan or an issue of Acceptances takes place.

**“Sale/Lease-Back Transaction”** means any transaction, series of transactions (related or not) or arrangement (including any agreement in relation thereto) pursuant to which Business Assets of a Person are disposed of and are thereafter leased back, or are otherwise made available for use, to that Person.

**“Sales Taxes”** means sales, transfer, turnover or value added taxes of any nature or kind, including Canadian goods and services taxes and federal, state and provincial sales and excise taxes.

**“Second Amended Closing Date”** means December 14, 2006.

**“Second Amended Credit Agreement”** is used with the defined meaning assigned to it in the Background to this Agreement.

**“Secured Agreements”** and **“SECURED AGREEMENTS”** is used with the defined meaning assigned to **“SECURED AGREEMENTS”** in Subsection 17.15.1.

**“Secured Documents”** at any time means the Loan Documents, the Cash Management Agreements and the Treasury Agreements in effect at that time.

**“Secured Obligations”** means Loan Obligations, Cash Management Obligations and Treasury Obligations, and any item or part of any thereof.

**“Secured Parties”** at any time means the Senior Lenders and each Hedge Provider at that time.

**“Secured Somerset Group Member”** means the Borrower and each Subsidiary of the Borrower that has granted the guarantees and Liens in favour of the Lender contemplated by Article 12.

**“Security”** at any time means the Liens and guarantees created (or intended by their express or implied terms to be created) by any of the Security Documents.

**“Security Documents”** at any time means the agreements, documents and instruments listed in Schedule 5 and each additional agreement, document and instrument delivered to or for the benefit of the Senior Lenders at or before such time to secure or guarantee, directly or indirectly, the payment or performance of any of the Secured Obligations.

**“Senior Lenders”** means the Agent and the Lenders, or (as the context so admits) each and any of them.

**“Senior Lender’s Own Taxes”** in relation to any Senior Lender means any Taxes now or hereafter imposed, levied, collected, withheld or assessed on that Senior Lender by any applicable Governmental Body of any jurisdiction in which that Senior Lender is subject to Taxes as a result of that Senior Lender (i) having a permanent establishment in such jurisdiction, (ii) being organized under the laws of such jurisdiction, (iii) being resident in such jurisdiction or (iv) being engaged in a trade or business in such jurisdiction; but does not include (A) any Sales Taxes payable under the laws of any such jurisdiction with respect to any goods or services made available by that Senior Lender or (B) Taxes levied only by reason of the fact that that Senior Lender has executed, delivered, performed its obligations under, has received or is entitled to receive payments under, or has enforced any Loan Document.

**“Senior Officer”** of any Person means the Chairman of the Board, the President, the Chief Financial Officer, the Treasurer, a Senior Vice President, a Vice President or the Secretary of such Person, or any other Representative of such Person (including a Representative of another Person that is managing the business of such Person) who performs the function normally expected of an individual holding any of the aforesaid offices, including any trustee of a Person that is a trust.

**“Software”** means all computer programs and databases owned by or licensed to any Somerset Group Member in whatever form and on whatever medium those

programs or databases might be expressed, fixed, embodied or stored from time to time, including the object code and source code versions thereof and all corrections, updates, enhancements, translations, modifications, derivations and new versions thereof together with both the media upon or in which such software and databases are expressed, fixed, embodied or stored (such as disks, diskettes, tapes and semiconductor chips) and all flow charts, manuals, instructions, documentation and other material relating thereto.

**“Solvent”** means, when used with respect to a Person, that (i) the fair saleable value of the Business Assets of such Person is in excess of the total amount of the present value of its liabilities (including for purposes of this definition all liabilities (including loss reserves), whether or not reflected on a balance sheet prepared in accordance with GAAP and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed), (ii) such Person is able to pay its debts or obligations in the ordinary course as they mature and (iii) in relation to any Person incorporated or formed under the laws of any jurisdiction that imposes limitations on the legality, validity, binding effect or enforceability of any guarantee by reason of a Person’s unreasonably small capital (or equivalent or like criteria), such Person does not have unreasonably small capital (or equivalent or like criteria) to carry out its business as conducted and as proposed to be conducted. For the purposes of this definition (1) “debt” means liability on a “claim” and (2) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy or breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured. **“Solvency”** shall have a correlative meaning.

**“Somerset Canada”** means (i) Somerset Entertainment Ltd., a corporation incorporated under the laws of the Province of Ontario immediately before the effective time of the Amalgamation and (ii) the corporation which continued upon the Amalgamation taking effect and existing as at the Effective Time as a corporation amalgamated under the laws of the Province of Ontario.

**“Somerset Canada Notes”** means the CAD97,800,000 subordinated notes issued by Somerset Canada to the Borrower as part of the Original Transaction and any additional such notes issued and in effect from time to time.

**“Somerset Group”** means the Borrower and its Subsidiaries; and **“Somerset Group Member”** means any of them.

**“Somerset Group Business”** means the Core Business and all businesses necessarily incidental thereto.

**“Somerset Group Facilities”** means all real property and rights therein of any Somerset Group Member and all buildings, plants, infrastructure and other facilities located thereon and all other machinery and equipment owned, leased,

managed, controlled or operated by any Somerset Group Member or for which any Somerset Group Member is otherwise obligated under Environmental Law.

**“Somerset GP”** means Somerset Entertainment GP Inc., existing as at the Effective Time as a corporation incorporated under the laws of the Province of Ontario.

**“Somerset Holdings”** means (i) Somerset Entertainment Holdings Inc., a corporation incorporated under the laws of the Province of Ontario immediately before the effective time of the Amalgamation and (ii) Somerset Entertainment Ltd., the corporation which continued upon the Amalgamation taking effect and existing as at the Effective Time as a corporation amalgamated under the laws of the Province of Ontario.

**“Somerset Income Fund Group”** means the Fund and its Subsidiaries, including the Somerset Group; and **“Somerset Income Fund Group Member”** means any of them.

**“Somerset Trust”** means Somerset Entertainment Trust, established as at the Effective Time as a trust formed under the laws of the Province of Ontario.

**“Somerset UK”** means Somerset Entertainment International Limited, existing as at the Effective Time as a company incorporated under the laws of England.

**“Somerset US”** means Somerset Entertainment Inc., existing as at the Effective Time as a corporation incorporated under the laws of the State of Delaware.

**“Somerset US Notes”** means the CAD10,000,000 subordinated notes issued by Somerset US to Somerset Canada as part of the Original Transaction and any additional such notes issued and in effect from time to time.

**“Spot Rate”** as at any date with respect to the conversion of an amount in one currency (the “original currency”) to another currency (the “other currency”) means the Bank of Canada noon rate of exchange on the immediately preceding Business Day for the purchase of such original currency with such other currency (and if neither currency is Canadian Dollars, purchasing Canadian Dollars first with such other currency and using the Canadian Dollars purchased to purchase the original currency).

**“Stamping Fee”** means the stamping fee payable to a Lender on an Acceptance at the time that Acceptance is issued, calculated and payable in the manner provided for in Section 5.6.

**“Standby Fee”** means the standby fee payable under Section 8.3.

**“Standby Instrument”** means a Documentary Credit, Letter of Guarantee or Standby Letter of Credit, as the context requires.

**“Standby Instrument Disbursement”** means an Advance deemed to be made by an Issuing Bank pursuant to Subsection 7.2.4.

**“Standby Instrument Fees”** means the fees payable pursuant to Section 7.5 in respect of Standby Instruments.

**“Standby Letter of Credit”** means a standby letter of credit, including any replacements, renewals and amendments, issued or deemed issued by a Lender pursuant to this Agreement.

**“Statutory Prior Claims”** means claims for unpaid wages, vacation pay, worker’s compensation, unemployment insurance premiums, pension plan contributions, employee or non-resident withholding tax source deductions, realty taxes (including utility charges and business taxes which are collectable like realty taxes), unremitted Sales Taxes, customs duties or similar statutory obligations secured by a Lien on any Somerset Group Member’s Business Assets ranking prior to or *pari passu* with the Security.

**“Subordinated Debt”** means any Debt of any Somerset Group Member which is unsecured, subordinated and postponed to the prior Payment in Full of the Secured Obligations in a manner satisfactory in form and substance to the Required Lenders.

**“Subsidiary”** of any Person (the “relevant party”) at any time means and includes (i) any Person that is Controlled by the relevant party and a majority of whose Participating Capital Stock is at that time owned by the relevant party directly or indirectly through Subsidiaries of the relevant party and (ii) any other Person (A) the accounts of which are consolidated with those of the relevant party in the relevant party’s consolidated financial statements prepared in accordance with GAAP and (B) that is Controlled by the relevant party. A Person shall be deemed to be a Subsidiary of another Person if it is a Subsidiary of a Person that is that other’s Subsidiary. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Borrower.

**“Swing Line”** means the credit facility established by the Swing Line Lender in favour of the Borrower under Article 3.

**“Swing Line Advance”** means an Advance to the Borrower made pursuant to the Swing Line.

**“Swing Line Commitment”** means the maximum amount of the Swing Line which the Swing Line Lender has agreed to make available to the Borrower pursuant to the Swing Line as set out opposite its name under the “Swing Line Commitment” column in Schedule 1, or as set forth in any Loan Transfer Agreement, as such amount may be changed from time to time pursuant to the provisions of this Agreement.

**“Swing Line Lender”** means (i) TD acting in its capacity as swing line lender under the Swing Line and (ii) each immediate and subsequent Transferee of TD relative to its rights and obligations under the Swing Line.

**“Swing Line Maturity Date”** means the Revolving Facility Maturity Date.

**“Take-Over Bid”** means a “take-over bid” as defined in the *Securities Act* (Ontario) except that all references to “Ontario” shall be amended to “any jurisdiction in the world”.

**“Taxes”** means all taxes of any kind or nature whatsoever including federal large corporation taxes, provincial capital taxes, realty taxes (including utility charges and business taxes which are collectible like realty taxes), property transfer taxes, Income Taxes, Sales Taxes, customs duties, payroll taxes, levies, stamp taxes, royalties, duties, and all fees, deductions and withholdings imposed, levied, collected, withheld or assessed as of the Effective Time or at any time in the future, by any Governmental Body of or within Canada, or any other jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon.

**“TD”** means The Toronto-Dominion Bank.

**“Term”** for any Advance by way of Acceptances means the period of one (1), two (2), three (3) or six (6) months, as selected by the Borrower in a Borrowing Request commencing on (and including) the Borrowing Date of such Advance; provided that any Term that would otherwise end on a day which is not a Business Day shall be extended or shortened in accordance with the Modified Following Business Day Convention.

**“Term Commitment”** of any Term Lender means the maximum portion of the Term Facility which such Term Lender has agreed to make available to the Borrower as set out opposite its name under the “Term Commitment” column in Schedule 1, or as set forth in any Loan Transfer Agreement, as such amount may be changed from time to time pursuant to the provisions of this Agreement.

**“Term Facility”** means the reducing non-revolving term credit facility established by the Term Lenders in favour of the Borrower under Article 3.

**“Term Facility Maturity Date”** means October 14, 2011 or, if such day is not a Business Day, the preceding Business Day.

**“Term Lender”** means a Lender that has agreed to make available to the Borrower a portion of the Term Facility under this Agreement.

**“Termination Event”** means (i) a Reportable Event with respect to any Benefit Plan; (ii) the withdrawal of the Borrower or any ERISA Affiliate from a Benefit Plan during a plan year in which the Borrower or such ERISA Affiliate was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (iii) the

imposition of an obligation on the Borrower or any ERISA Affiliate under Section 4041 of ERISA to provide affected parties written notice of intent to terminate a Benefit Plan in a distress termination described in Section 4041(c) of ERISA or, with respect to any Non-US Pension Plan, written notice to the trustees or fiduciaries of, or members in, such plan, or to a Governmental Body of an intent to terminate such Non-US Pension Plan; (iv) the institution by the PBGC or any similar Governmental Body of proceedings to terminate a Benefit Plan or any Non-US Pension Plan; (v) any event or condition which could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Benefit Plan; (vi) a Governmental Body shall appoint or institute proceedings to appoint a receiver to administer or wind up any Non-US Pension Plan; or (vii) the partial or complete withdrawal of the Borrower or any ERISA Affiliate from a Multiemployer Plan or of any Somerset Group Member from any Non-US Pension Plan.

**“Test Period”** at any time means the period of four (4) consecutive Fiscal Quarters which has most recently ended.

**“Third Amended Closing Date”** means the date the Effective Time occurs which shall be October 16, 2008.

**“Third Fee Letter”** means the letter agreement dated the Third Amended Closing Date entered into between the Borrower and The Toronto-Dominion Bank providing for fees payable by the Borrower pursuant to or otherwise in respect of this Agreement.

**“Threshold Amount”** at any time means CAD1,000,000 (or the Equivalent Amount in foreign currency).

**“Total Commitment”** means the total sum of all the Commitments of the Lenders.

**“Total Debt”** at any time means the amount equal to the total sum (without duplication) of all Indebtedness of the Borrower at that time determined on a consolidated basis in accordance with GAAP.

**“Total Exposure”** of a Lender at any time means the total amount of the Secured Obligations owing to that Lender at that time determined by that Lender and approved by the Agent. For this purpose, (i) the Loan Obligations of each Lender shall be determined by the Agent in accordance with the provisions of this Agreement, (ii) the Cash Management Obligations shall be determined as the amount certified by that Lender to be the net amount owing to that Lender under all Cash Management Agreements and (iii) the net amount of all Treasury Obligations shall be determined as the amount certified by that Lender to be the sum of the Derivative Exposures (adding Out-of-the-Money Derivative Exposures and subtracting In-the-Money Derivative Exposures) under all Treasury Agreements to which that Lender and each Somerset Group Member are party.

**“Total Debt/EBITDA Ratio”** for any Test Period means the ratio of (i) Total Debt at the end of that Test Period divided by (ii) EBITDA of the Borrower for that Test Period.

**“Total Revolving Commitment”** means the total sum of the Revolving Commitments of the Lenders.

**“Total Term Commitment”** means the total sum of the Term Commitments of the Lenders.

**“Transferee”** is used with the defined meaning assigned to it in Subsection 17.10.4.

**“Treasury Agreement”** means (i) a Financial Hedge Agreement which is entered into by a Somerset Group Member with a Senior Lender and (ii) a spot or forward foreign exchange contract entered into by a Somerset Group Member with a Senior Lender to pay or hedge the actual or anticipated operating or capital expenditures, operating revenues or capital receipts of any Somerset Group Member denominated in foreign currency.

**“Treasury Obligations”** means the Indebtedness and other obligations of each Somerset Group Member owing to each Senior Lender arising under, pursuant to or otherwise in respect of each Treasury Agreement, including any Guarantee thereof or otherwise, and any item or part of any thereof. For certainty, “Treasury Obligations” shall include interest accruing subsequent to the commencement of, or which would have accrued but for the commencement of, any Bankruptcy Proceeding, in accordance with and at the rate (including any applicable default rate to the extent lawful) specified therein, whether or not such interest is an allowable claim in such Bankruptcy Proceeding.

**“Trust Declaration of Trust”** means the declaration of trust dated March 10, 2005 between Andrew Burgess, Gordon Gibson, William Ardell, Robert Steacy and Judson Martin as trustees and the Fund.

**“Trust Notes”** means the series 1 notes, series 2 notes and series 3 notes of Somerset Trust issued under the Note Indenture.

**“Type”** means, with respect to any Advance, other than a Standby Instrument, its form as a Canadian Prime Rate Loan, Libor Loan, US Base Rate Loan or an issue of Acceptances.

**“United States Dollars”**, **“US Dollars”** and the symbol **“USD”** each means dollars which are the lawful currency of the United States of America.

**“Unrelated Party”** in relation to any Person (the “relevant party”) means another Person that deals at arm’s length with the relevant party and is not an Affiliate or Related Person of the relevant party.

**“US Bankruptcy Code”** means Title 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101 et. seq.).

**“US Base Rate”** on any day means the variable nominal interest rate equal on such day to the percentage rate per annum determined by the Agent (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100<sup>th</sup> of 1%) to be the greater of (i) the rate of interest which the Reference Lender establishes from time to time as the reference rate of interest for determination of the interest rates it will charge for loans made in US Dollars in Canada and which it refers to as its base rate (or its equivalent or analogous such rate) or (ii) the sum of (A) the yearly rate of interest to which the Federal Funds Rate is equivalent plus (B) one percent (1.0%).

**“US Base Rate Loan”** means an Advance by way of loan in United States Dollars under a Credit Facility on which interest shall be calculated in accordance with the applicable provisions of this Agreement with reference to the US Base Rate.

**“US Publicly Traded Entity”** means a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a Wholly-Owned Subsidiary of such a Person.

**“USA Patriot Act”** means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

**“Voting Capital Stock”** means Capital Stock of a Person which carries voting rights or the right to Control such Person under any circumstances, provided that Capital Stock which carries the right to vote or Control conditionally upon the happening of an event shall not be considered Voting Capital Stock until the occurrence of such event and then only during the continuance of such right to vote or Control.

**“Waste”** means ashes, garbage and refuse and includes domestic waste, industrial waste, municipal refuse or such other wastes as are designated as such under any Environmental Law.

**“Wholly-Owned Subsidiary”** of a Person (the “relevant party”) means any Subsidiary, all of the outstanding Capital Stock of which, shall at the time be owned (except for director’s qualifying shares) and Controlled, directly or indirectly, by the relevant party or one or more Wholly-Owned Subsidiaries of the relevant party, or by the relevant party and one or more Wholly-Owned Subsidiaries of the relevant party. A Person shall be deemed to be a Wholly-Owned Subsidiary of another Person if it is a Wholly-Owned Subsidiary of a Person that is that other’s Wholly-Owned Subsidiary. Unless otherwise expressly provided, all references herein to a “Wholly-Owned Subsidiary” shall mean a Wholly-Owned Subsidiary of the Borrower.

“\$” means CAD or USD, as the context requires.

## 1.2 Additional References

To the extent the context so admits, any reference in this Agreement to:

“**agreement**” shall be construed as any agreement, oral or written, any simple contract, deed or specialty, and includes any bond, bill of exchange, indenture, instrument or undertaking.

an “**approved credit rating**” means a rating at or above one of the following rating categories issued by the following credit rating organizations (or their respective successors) for the category of commercial paper/short term debt (or any replacement such rating category), namely (i) R-1 (low) issued by Dominion Bond Rating Service Limited, (ii) F1 issued by Fitch Ratings, (iii) P-1 issued by Moodys Investors Service or (iv) A-1 (Low) issued by Standard & Poor’s.

“**arm’s length**” shall be construed in the same manner it is used in the *Income Tax Act* (Canada).

“**change**” shall be construed as change, modify, alter, amend, supplement, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive or (where the context so admits) the noun or participle form of any of the foregoing, and “**changed**” shall be construed in like manner.

“**dispose**” shall be construed as lease, sell, transfer, license or otherwise dispose of any property, or the commercial benefits of use or ownership of any property, including the right to profit or gain therefrom, whether in a single transaction or in a series of related transactions (other than the payment of money), and “**disposed**”, “**disposition**” and “**disposal**” shall be construed in like manner.

“**fair market value**” shall be construed as the highest price, expressed in terms of money or moneys worth, available in an open and unrestricted market between informed and prudent parties, each acting at arm’s length, where neither party is under any compulsion to act.

“**guarantee**” shall be construed as any guarantee, indemnity, letter of comfort or other assurance made in respect of any Indebtedness, other obligation or financial condition of another, including (i) any purchase or repurchase agreement, (ii) any obligation to supply funds or invest in such other, (iii) any keep-well, take-or-pay, through-put or other arrangement having the effect of assuring or holding harmless another against financial loss, or maintaining another’s solvency or financial viability or (iv) any obligation under any “Credit Derivative Transaction” within the meaning used in the 2003 ISDA Credit Derivative Definitions published by ISDA; but shall exclude endorsements on notes, bills and cheques presented to financial institutions for collection or deposit in the ordinary course of business; and “**guaranteed**” and “**guarantees**” shall be construed in like manner. Whenever in this Agreement the amount of any

guarantee is required to be determined or measured such amount shall be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming the guarantor is required to perform thereunder) as determined by the guarantor in good faith or, if the guarantee is expressly limited to a specified amount, such specified amount.

**“include”, “includes” and “including”** shall be construed to be followed by the statement “without limitation” and none of such terms shall be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters.

**“knowledge”** of any Person means to the best of that Person’s knowledge, information and belief after reasonable enquiry.

**“losses and expenses”** shall be construed as losses, costs, expenses, damages, penalties, Awards, Orders, claims, claims over, demands and liabilities, including any applicable court costs and legal fees and disbursements on a solicitor and client basis, and **“loss and expense”** shall be construed in like manner.

**“obligations”** shall be construed as indebtedness, obligations, promises, covenants, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise, and **“obliged”**, **“obligation”** and **“obligated”** shall be construed in like manner.

**“rate of exchange”** shall be construed so as to include any premiums or costs payable in connection with any currency conversion being effected.

**“receiver”** shall be construed to include a privately appointed or court appointed receiver or receiver and manager, interim receiver, liquidator, trustee-in-bankruptcy, administrator, administrative receiver and any other like or similar official.

**“rights”** shall be construed as rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise; and **“right”** shall be construed in like manner.

**“set-off”** means any right or obligation of set-off, compensation, offset, combination of accounts, netting, retention, withholding, reduction, deduction, counter-claim or any similar right or obligation, or (as the context requires) any exercise of any such right or performance of such obligation.

**“successor”** of a Person (the “relevant party”) shall be construed so as to include (i) any amalgamated or other body corporate of which the relevant party or any of its successors is one of the amalgamating or merging body corporates, (ii) any

body corporate resulting from any court approved arrangement of which the relevant party or any of its successors is party, (iii) any Person to whom all or substantially all the Business Assets of the relevant party is transferred, (iv) any body corporate resulting from the continuance of the relevant party or any successor of it under the laws of another jurisdiction of incorporation and (v) any successor (determined as aforesaid or in any similar or comparable procedure under the laws of any other jurisdiction) of any Person referred to in Clause (i), (ii), (iii) or (iv) of this definition. Each reference in this Agreement to any party hereto or any other Person shall (where the context so admits) include its successors.

### **1.3 References to Agreements**

Unless the context otherwise requires, each reference in this Agreement to any agreement (including this Agreement and any other defined term that is an agreement) shall be construed so as to include such agreement (including any attached schedules, appendices and exhibits) and each change made to it at or before the time in question; provided that (a) no change to this Agreement shall be effective unless it is made in compliance with Section 17.18 and (b) any change to any agreement which is not made in compliance with this Agreement shall be disregarded for the purposes of determining whether or not the Credit Party thereto is in compliance with its obligations relative thereto under the Secured Documents (save for any obligations not to change such agreement contained in any Secured Document).

### **1.4 Reference to Statutes**

Unless the context otherwise requires, each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision of any thereof) at any time shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each change thereto made at or before that time.

### **1.5 Headings, etc.**

The division of this Agreement into Articles, Sections, Subsections and Schedules and the insertion of headings and titles are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The Article, Section, Subsection and Schedule headings and titles in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions and shall not be considered part of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection, Schedule, paragraph, subparagraph, Clause or other portion of this Agreement.

### **1.6 Grammatical Variations**

In this Agreement, unless the context otherwise requires, (i) words and expressions (including words and expressions (capitalized or not) defined or given extended meanings) in the singular include the plural and vice versa (the necessary changes being made to fit the context), (ii) words in one gender include all genders and (iii) grammatical variations of

words and expressions (capitalized or not) which are defined or given extended meanings in this Agreement shall be construed in like manner.

### **1.7 Accounting Principles**

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference means generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, including those set out in the Handbook of the Canadian Institute of Chartered Accountants. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purposes of this Agreement or any other Loan Document, including the contents of any Certificate to be delivered hereunder, such determination, consolidation or computation shall, unless the parties otherwise agree or the context otherwise require, be made in accordance with such generally accepted accounting principles applied on a consistent basis.

### **1.8 References to Time**

Each reference in this Agreement to any time of the day shall, unless otherwise stated, be construed as a reference to Toronto time.

### **1.9 Rounding**

Unless otherwise stated, all dollar amounts expressed in Canadian Dollars or US Dollars determined pursuant to this Agreement shall be rounded up, if necessary to be expressed in a whole number of cents, to the nearest cent.

## **ARTICLE 2 THE REVOLVING FACILITY**

### **2.1 Establishment of Revolving Facility**

Upon and subject to the terms and conditions of this Agreement, the Revolving Lenders hereby establish a committed revolving credit facility in favour of the Borrower to (a) finance the working capital requirements of the Borrower and its Subsidiaries arising in the ordinary course of their operations, (b) normalize distributions that are Permitted Distributions and (c) finance other general corporate purposes, but excluding (unless the Required Lenders otherwise consent) the financing of any Hostile Take-Over Bid. Each Revolving Lender severally (and not jointly) agrees, subject to Article 11 to make its share available in each Borrowing to be made under the Revolving Facility in accordance with its Rateable Share of the Revolving Facility. The Borrower shall so apply all amounts borrowed by it under the Revolving Facility.

### **2.2 Facility Limit**

**2.2.1** *General.* On each Borrowing Date under the Revolving Facility, the Borrower shall ensure that the total Credit Amount of all Advances under the Revolving Facility does not exceed the lesser of (a) the Total Revolving Commitment and (b) the Borrowing Base minus the aggregate Credit Amount of all outstanding Advances under the Swing Line at such time.

2.2.2 *Facility Limit.* The initial Total Revolving Commitment is CAD5,000,000. Subject to Section 9.6, except for temporary excesses arising from foreign exchange fluctuations, the Borrower shall ensure that the aggregate Credit Amount of all Advances outstanding under the Revolving Facility shall not, at any time, exceed the lesser of (a) the Total Revolving Commitment and (b) the Borrowing Base minus the aggregate Credit Amount of all outstanding Advances under the Swing Line at such time.

2.2.3 *Reductions.* The Total Revolving Commitment shall be permanently cancelled and reduced by the amount of each reduction in the Total Revolving Commitment made pursuant to any of Subsection 9.1.1 and Sections 9.3.1 and 9.7 and accordingly (except for a reduction pursuant to Section 9.7) the Revolving Commitment of each Revolving Lender shall be permanently cancelled and reduced by the proportion of such reduction which such Revolving Lender's Revolving Commitment bears to the Total Revolving Commitment. Each Affected Senior Lender's Revolving Commitment shall be permanently cancelled and reduced to the extent required pursuant to Section 9.7.

### **2.3 Availability**

During the Availability Period for the Revolving Facility, the Borrower may borrow, repay and reborrow Advances under the Revolving Facility on a revolving basis by way of Loans and issues of Acceptances. In addition, the Borrower may borrow by way of Standby Instruments under the Revolving Facility in accordance with the provisions of Article 7.

### **2.4 Excess Refinanced Existing Loans and Acceptances**

As at the Effective Time, any Refinanced Loans and Acceptances not continued under the Term Loan pursuant to Section 4.3 shall continue outstanding as Advances and Acceptances, as the case may be, under the Revolving Facility. The Borrower shall be obliged to repay Refinanced Loans and Acceptances continued under the Revolving Facility pursuant to this Section 2.4 in accordance with the terms and conditions hereof applicable to the Revolving Facility.

### **2.5 Refinancing Existing Standby Instruments**

As at the Effective Time, any Standby Instruments outstanding under the Revolving Facility (as each such term is defined in the Second Amended Credit Agreement) shall continue as a Standby Instrument under the Revolving Facility after the Effective Time. The Borrower shall be obliged to make payments to the Revolving Lenders in respect of each such Standby Instrument continued under the Revolving Facility pursuant to this Section 2.5 in accordance with the terms and conditions hereof applicable to a Standby Instrument issued under the Revolving Facility.

### **2.6 Drawdown Requests**

The Borrower must deliver a Borrowing Request to the Agent to obtain a Drawdown under the Revolving Facility at the times and stipulating the information specified below:

- (a) for a Floating Rate Loan, before 10:00 a.m. on the Business Day before the proposed Drawdown Date specifying the principal amount (which must be \$500,000 or a whole number multiple of \$100,000 in excess thereof) and the proposed Drawdown Date (which must be a Business Day falling within the Availability Period for the Revolving Facility);
- (b) for a Libor Loan, before 10:00 a.m. on the Business Day before the Quotation Date for the Interest Period commencing on the proposed Drawdown Date specifying the principal amount (which must be USD500,000, or a whole number multiple of USD100,000 in excess thereof) and the proposed Interest Period (which must commence within the Availability Period for the Revolving Facility and end on or before the Revolving Facility Maturity Date);
- (c) for an issue of Acceptances, as required in accordance with Article 5; and
- (d) the issuance of a Standby Instrument, as required in accordance with Article 7.

## **2.7 Proceeds of Drawdown**

The proceeds of each Drawdown by way of Loan under the Revolving Facility when received by the Agent, shall, subject to Sections 9.9 and 11.3, be advanced by the Agent to the Borrower pursuant to Subsection 16.21.1 by bank transfer to the credit of the Borrower's Accounts. The proceeds from the sale of Acceptances will be dealt with in accordance with Article 5 and Article 6.

## **2.8 Adjustments to the Total Revolving Commitment and the Swing Line Commitment**

So long as there is only one Lender, the amount of the Total Revolving Commitment at any time shall be adjusted by this Section 2.8 so that it equals the sum of (a) the Total Revolving Commitment at that time determined without reference to this Section 2.8 plus (b) the amount, if any, by which (i) the Swing Line Commitment at that time exceeds (ii) the aggregate Credit Amount of all Advances then outstanding under the Swing Line. The Borrower shall ensure that, subject to Section 9.6, the aggregate Credit Amount of all Advances outstanding under the Revolving Facility and Swing Line at no time exceeds the sum of the Total Revolving Commitment plus the Swing Line Commitment.

# **ARTICLE 3 THE SWING LINE**

## **3.1 Establishment of the Swing Line**

3.1.1 The Swing Line Lender hereby establishes a committed revolving credit facility in favour of the Borrower and, subject to Section 11.3, agrees to make Loans thereunder to the Borrower to finance the working capital requirements of the Borrower and its Subsidiaries arising in the ordinary course of their operations, as well as for other general corporate purposes, but excluding (unless the Swing Line Lender otherwise consents) the financing of any Hostile Take-Over Bid. The Borrower shall so apply all amounts borrowed by it under the Swing Line.

3.1.2 The Swing Line Lender may (but shall not be obliged to), subject to Section 11.3, issue Documentary Credits or other Standby Instruments from time to time under this revolving credit facility in accordance with the provisions of Article 7.

### **3.2 Swing Line Commitment**

3.2.1 *General.* The Borrower shall ensure that, at any time, the aggregate Credit Amount of all Advances under the Swing Line does not exceed the lesser of (a) the Swing Line Commitment and (b) the Borrowing Base minus the aggregate Credit Amount of all outstanding Advances under the Revolving Facility at such time.

3.2.2 *Initial Swing Line Commitment.* The initial Swing Line Commitment is CAD2,000,000.

3.2.3 *Reductions.* The Swing Line shall be permanently cancelled and the Swing Line Commitment shall reduce to nil on the earlier of (a) the date the Swing Line terminates pursuant to Subsection 3.5.1 and (ii) the Swing Line Maturity Date.

### **3.3 Overdraft Basis**

Each Advance (other than a Standby Instrument) under the Swing Line shall be made by the Swing Line Lender on an overdraft basis by debiting the Borrower's Accounts. The amount of such overdraft from time to time shall be deemed to be a Canadian Prime Rate Loan (to the extent such debit balance is denominated in Canadian Dollars) or a US Base Rate Loan (to the extent such debit balance is denominated in US Dollars).

### **3.4 Refunding the Swing Line**

The Swing Line Lender may at any time that the aggregate Credit Amount of all Loans outstanding under the Swing Line exceeds CAD1,000,000 request the Agent to request a Drawdown from the Revolving Lenders in an amount specified by the Swing Line Lender in such request sufficient to repay all or any portion of such Swing Line Loans (rounded up, if necessary, to meet the requirements for a Drawdown under Section 2.6(a)). Such request shall be deemed to be a Borrowing Request duly issued by the Borrower to the Agent requesting a Floating Rate Loan pursuant to the Revolving Facility.

### **3.5 Adjustments on Termination of the Swing Line**

3.5.1 *Adjustments and Assignments.* The Swing Line Lender may at any time, whether or not a Default has occurred and is continuing, cancel or terminate the Swing Line by notice to the Agent and the Borrower. If the Agent cancels or terminates the Revolving Facility in whole or in part pursuant to Section 15.2, the Agent shall, unless the Swing Line Lender agrees otherwise, also cancel or terminate the Swing Line Commitment in its entirety. If the Swing Line is cancelled or terminated:

- (a) the Swing Line Commitment shall reduce to nil;
- (b) the Swing Line Lender shall (if not already a Revolving Lender) become a Revolving Lender with a Commitment thereunder equal to the amount (or if

already a Revolving Lender, its Commitment in respect of the Revolving Facility shall be increased by the amount) of the Swing Line Commitment in effect before it was reduced to nil pursuant to clause (a) above;

- (c) the Agent will determine the amount of adjusting payments that may need to be made amongst the Revolving Lenders (including the Swing Line Lender) to ensure that their respective shares in outstanding Advances under the Revolving Facility (which shall be deemed to include any outstanding Standby Instruments under the Swing Line) equal their respective Rateable Shares of the Revolving Facility based on their respective Commitments in effect before any reduction of Commitments takes effect pursuant to Section 15.2;
- (d) each of the Revolving Lenders (including, if applicable, the Swing Line Lender) shall advance to the Agent the amount of any adjusting payment required of it determined pursuant to clause (c) above;
- (e) the Agent shall, upon receipt from the Revolving Lenders (including the Swing Line Lender) advance to each applicable Revolving Lender (including, if applicable, the Swing Line Lender) the amount of any adjusting payment required to be paid to such Revolving Lender as determined pursuant to clause (c) above; and
- (f) the Borrower shall be obliged to repay outstanding Advances under the Revolving Facility in the Rateable Shares amongst the Revolving Lenders as adjusted pursuant to this Subsection 3.5.1.

3.5.2 *Participations.* If adjusting advances pursuant to Subsection 3.5.1 cannot for any reason be made or the Revolving Lenders for any reason would not as a result thereof share rateably in the aggregate amount of the Advances outstanding under the Revolving Facility in their respective Rateable Shares based on their respective Commitments in effect before any reduction of Commitments takes effect pursuant to Section 15.2, each Revolving Lender hereby agrees that it shall forthwith purchase from the Swing Line Lender, and each Revolving Lender (including the Swing Line Lender) agrees that it shall forthwith purchase from each of the other Revolving Lenders, as applicable, such participations in the Advances outstanding under the Revolving Facility (which shall be deemed to include any outstanding Standby Instruments under the Swing Line) as shall be necessary to cause the Revolving Lenders to share in such Advances rateably based on their respective Revolving Commitments (taking into account any increase therein pursuant to Subsection 3.5.1(a) which effectively increases the Revolving Commitment by the Swing Line Commitment, but disregarding any reduction thereof pursuant to Section 15.2); provided that all interest payable on Advances outstanding under the Swing Line shall be for the account of the Swing Line Lender until the date their respective participation is paid for and, to the extent attributable thereto, shall be payable to the purchasing Revolving Lender from and after such date of payment.

3.5.3 *Failure by Lender to Advance.* If a Revolving Lender (a “**Defaulting Revolving Lender**”) fails to make payment on the due date therefor of any amount due from it for the account of the Swing Line Lender pursuant to Subsection 3.5.1 or 3.5.2 (the balance thereof for the time being unpaid being referred to in this Subsection 3.5.3 as an “**overdue amount**”) then

until the Swing Line Lender has received payment of the overdue amount (plus interest as provided below) in full (and without in any way limiting the rights of the Swing Line Lender in respect of such failure):

- (a) the Swing Line Lender shall be entitled to receive any payment which the Defaulting Revolving Lender would otherwise have been entitled to receive in respect of the Credit Facilities or otherwise in respect of any Secured Document; and
- (b) the overdue amount shall bear interest payable by the Defaulting Revolving Lender to the Swing Line Lender at the rate payable by the Borrower in respect of the Loan Obligations which gave rise to such overdue amount.

### **3.6 Refinancing Existing Standby Instruments**

As at the Effective Time, any Standby Instruments outstanding under the Swing Line (as each such term is defined in the Second Amended Credit Agreement) shall continue as a Standby Instrument under the Swing Line after the Effective Time. The Borrower shall be obliged to make payments to the Swing Line Lender in respect of each such Standby Instrument continued under the Swing Line pursuant to this Section 2.5 in accordance with the terms and conditions hereof applicable to a Standby Instrument issued under the Swing Line.

## **ARTICLE 4 THE TERM FACILITY**

### **4.1 Establishment of Term Facility**

Upon and subject to the terms and conditions of this Agreement, the Term Lenders hereby establish a committed reducing non-revolving term credit facility in favour of the Borrower to refinance the Term Loan outstanding under the Second Amended Agreement as at the Effective Time. Each Term Lender severally (and not jointly) agrees to make, subject to Article 11, its share available in each Borrowing to be made under the Term Facility in accordance with its Rateable Share of the Term Facility.

### **4.2 Facility Limit**

4.2.1 *General.* On each Borrowing Date under the Term Facility, the Borrower shall ensure that the Credit Amount of all Advances under the Term Facility does not exceed the Total Term Commitment.

4.2.2 *Facility Limit.* The initial Total Term Commitment is CAD11,200,000. Subject to Section 9.6, except for temporary excesses arising from foreign exchange fluctuations, the Borrower shall ensure that the aggregate Credit Amount of all Advances outstanding under the Term Facility shall not exceed the Total Term Commitment at any time.

4.2.3 *Reductions.* The Total Term Commitment shall be permanently cancelled and reduced by the amount of each reduction in the Total Term Commitment made pursuant to any of Subsections 9.1.3 and Sections 9.3.2 and 9.7 and accordingly (except for a reduction pursuant to Section 9.7) the Term Commitment of each Term Lender shall be permanently cancelled and

reduced by the proportion of such reduction which such Term Lender's Term Commitment bears to the Total Term Commitment. Each Affected Senior Lender's Term Commitment shall be permanently cancelled and reduced to the extent required pursuant to Section 9.7.

#### **4.3 Availability – Refinancing Existing Loans and Acceptances**

As at the Effective Time, Loans and issues of Acceptances outstanding under the Revolving Facility, the Swing Line and the Term Facility (as each such term is defined in the Second Amended Credit Agreement and referred to herein as “**Refinanced Loans and Acceptances**”), in the aggregate Credit Amount of up to the initial Total Term Commitment, shall continue outstanding as Loans and Acceptances, respectively, under the Term Facility after the Effective Time. The Lenders shall select which Refinanced Loans and Acceptances will continue under the Term Facility if the Credit Amount of all Refinanced Loans and Acceptances exceeds the initial Total Term Commitment. The Borrower shall be obliged to repay the Refinanced Loans and Acceptances continued under the Term Facility pursuant to this Section 4.3 in accordance with the terms and conditions hereof applicable to the Term Facility.

### **ARTICLE 5**

#### **BANKERS' ACCEPTANCES UNDER THE REVOLVING AND TERM FACILITIES**

##### **5.1 Notice and Term**

The Borrower may deliver a Borrowing Request to the Agent (which must be received by the Agent before 10:00 a.m. on the second Business Day before the commencement of the Term requested in the Borrowing Request to be effective) requesting that Drafts be accepted under the Revolving Facility or Term Facility on any proposed Borrowing Date and stating the aggregate face amount and the Term applicable to such Drafts. The Term of such Drafts must be a period of one (1), two (2), three (3) or six (6) months expiring on or before the applicable Maturity Date.

##### **5.2 Face Amount of Drafts**

The aggregate face amount of an issue of Drafts to be accepted on any particular Borrowing Date must be CAD500,000 or a whole number multiple of CAD100,000 in excess thereof. The face amount of each Draft must be a whole number multiple of CAD100,000.

##### **5.3 Power of Attorney**

In order to facilitate issues of Acceptances pursuant to this Agreement, the Borrower authorizes each Lender, and for this purpose appoints each Lender its lawful attorney with full right of substitution and delegation, to complete, sign and endorse Drafts issued in accordance with a Borrowing Request delivered to the Agent pursuant to Section 5.1 on its behalf in handwritten or by facsimile or mechanical signature or otherwise and, once so completed, signed and endorsed, and following acceptance of them as Acceptances under this Agreement, then discount, negotiate or deliver such Acceptances in accordance with the provisions of this Article 5. Drafts so completed, signed, endorsed, negotiated or delivered on behalf of the Borrower by any Lender shall bind the Borrower as fully and effectively as if so performed by an authorized officer of the Borrower.

## 5.4 Restrictions

5.4.1 *General.* The Agent shall have the discretion to restrict the term and maturity date of an issue of Acceptances. Unless the Agent notifies the Borrower to the contrary, the maximum number of issuances of Acceptances outstanding at any time is limited to 12.

5.4.2 *Marketability.* The obligations of the Lenders to accept and discount any requested issue of Acceptances pursuant to this Agreement are also subject to the Agent's determination that no BA Disruption Event (as defined in Subsection 8.8.2) has occurred.

## 5.5 Discount and Sale of Acceptances

5.5.1 *Purchase at Discount.* Subject to Sections 5.10 and 5.11, each Lender shall accept Drafts and purchase and take delivery of its Rateable Share under the applicable Credit Facility of each issue of Acceptances for its own account on the Borrowing Date of such Acceptances at the purchase price equal to the face amount of such Acceptances less an amount equal to the amount that yields to such Lender (excluding the Stamping Fee) an interest rate per annum equal to such Lender's BA Reference Rate for the applicable Term of such Acceptances. Each Lender shall be entitled to deduct from the Acceptance Proceeds derived from the purchase by it of Acceptances the Stamping Fee payable to it pursuant to Section 5.6. The Net Acceptance Proceeds for any Acceptances purchased by a Lender shall be determined in accordance with the following formula:

$$\text{Net Acceptance Proceeds} = \text{Face amount of Acceptances} \times \left[ \frac{1}{1 + (\text{BA Reference Rate} \times n/365)} - (\text{AM} \times n/365) \right]$$

Where n is the number of days to elapse in the Term of the Acceptances, BA Reference Rate is expressed as a decimal and AM is the Applicable Margin expressed as a decimal.

5.5.2 *Payment and Advance of Net Acceptance Proceeds.* Except as provided in Section 6.3 and Subsection 16.21.7 and subject to Article 11, each Lender shall remit the Net Acceptance Proceeds of its Rateable Share of each issue of Acceptances to the Agent on the Borrowing Date of that issue of Acceptances in exchange for delivery of such Acceptances. Such Net Acceptance Proceeds, when received by the Agent, shall, subject to Section 9.9 and Article 11, be advanced by the Agent pursuant to Subsection 16.21.1 by bank transfer to the credit of the Borrower's Accounts.

5.5.3 *Dealings with Acceptances.* Each Lender may at any time and from time to time purchase, hold, sell, rediscount or otherwise dispose of any Acceptance issued by it and no such dealing shall change the Borrower's obligations under Section 5.7.

## **5.6 Stamping Fee**

The Borrower shall pay to the Agent for the account of each relevant Lender a stamping fee on the issuance of each Acceptance by such Lender for the account of the Borrower which shall be in an amount equal to the product of (a) the face amount of such Acceptance multiplied by (b) the actual number of days to elapse in the Term of such Acceptance multiplied by (c) the fraction of (i) the Applicable Margin divided by (ii) 365. The stamping fee is reflected in the computation of Net Acceptance Proceeds set out in Subsection 5.5.1.

## **5.7 Payment of Acceptances.**

Unless made subject to a Conversion or a Rollover, the Borrower shall pay to each Lender the full face amount of each Acceptance accepted by that Lender for the account of the Borrower on the Period End Date of such Acceptance. If an Acceptance matures and the Borrower has not made such payment or provided for its Conversion or Rollover, such Acceptance shall be deemed to be converted on its Period End Date into a Canadian Prime Rate Loan made available by the Lender that had accepted that Acceptance in a principal amount equal to its full face amount.

## **5.8 Waivers**

The Borrower shall not claim from any Lender any days of grace for the payment at maturity of any Drafts presented and accepted by such Lender pursuant to this Agreement. In addition, the Borrower waives demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour and any other notice or defence to payment which might otherwise exist if for any reason an Acceptance is held by any Lender in its own right at the maturity thereof.

## **5.9 Notice of Maturing Acceptances**

The Borrower shall give the Agent, before 10:00 a.m. on the second Business Day before the Period End Date of each issue of Acceptances, a Repayment Notice or a Borrowing Request in respect of such Acceptances requesting a Conversion or Rollover on such Period End Date in order to permit each Lender to organize its internal funding requirements to fund the payment of the face amount of such Acceptances to the respective holders thereof upon or following maturity.

## **5.10 BA Equivalent Advances**

If a Lender does not customarily accept Drafts for the purpose of subsequent sale as a bankers' acceptance (a **“Non-Acceptance Lender”**), each time the Borrower gives a Borrowing Request for an issue of Acceptances, such Non-Acceptance Lender shall, in lieu of accepting and purchasing Acceptances pursuant to Section 5.5, either purchase Discount Notes pursuant to Section 5.11 or make a loan advance in Canadian Dollars to the Borrower (a **“BA Equivalent Advance”**) in the amount equal to the Net Acceptance Proceeds which would be derived from a hypothetical sale of Drafts accepted by that Non-Acceptance Lender (**“Notional Acceptances”**) in the aggregate face amount of its Rateable Share of such requested issue of Acceptances at a discount rate that yields to that Non-Acceptance Lender (excluding the

Stamping Fee) an interest rate per annum equal to that Non-Acceptance Lender's BA Reference Rate for the applicable Term of such Notional Acceptances. Any BA Equivalent Advance shall be repayable on the Period End Date of such issue of Acceptances. A Non-Acceptance Lender shall be entitled to deduct from the amount of its BA Equivalent Advance to be remitted to the Agent pursuant to Subsection 5.5.2 an amount equal to the Stamping Fee determined in accordance with Section 5.6 that would have been payable to it with respect to the Notional Acceptances corresponding to the BA Equivalent Advance.

### **5.11 Discount Notes**

A Non-Acceptance Lender may require the Borrower to issue a Discount Note to the Non-Acceptance Lender, in lieu of a Draft, and such Non-Acceptance Lender shall, in lieu of accepting and purchasing Acceptances pursuant to Section 5.5 or making BA Equivalent Advances under Section 5.10, purchase Discount Notes upon the same terms and conditions as apply to purchases of Acceptances.

### **5.12 References to Acceptances**

If, with respect to any Borrowing made by way of an issue of Acceptances there are Non-Acceptance Lenders that make B/A Equivalent Advances or discount Discount Notes in lieu of accepting and purchasing their respective Rateable Shares of such Acceptances, then each reference in this Agreement to (a) Acceptances comprised in that Borrowing shall be deemed to include those Discount Notes discounted and BA Equivalent Advances made by those Non-Acceptance Lenders, (b) the Net Acceptance Proceeds of that Borrowing or of any Acceptance comprised therein shall be deemed to include the amount of BA Equivalent Advances made and the purchase prices paid by Non-Acceptance Lenders for Discount Notes discounted by them in respect of such Borrowing, (c) the aggregate Stamping Fee in relation to that Borrowing or of any Acceptance comprised therein shall be deemed to include the equivalent fee payable to Non-Acceptance Lenders pursuant to Sections 5.10 and 5.11 in respect of their respective Rateable Shares thereof and (d) the face amount of Acceptances comprised in that Borrowing (including the Drafts so accepted) shall be deemed to include reference to the face amount of Notional Acceptances corresponding to those BA Equivalent Advances and the face amount of those Discount Notes comprised in such Borrowing; in each case with the necessary changes being made to fit the context to ensure that such Non-Acceptance Lenders are entitled to substantially the same rateable rights and benefits (in proportion to their respective Rateable Shares) as the other Lenders in relation to such Borrowing.

### **5.13 Clearing House System**

The Borrower agrees that each Lender may require that Drafts accepted by it be made payable to a clearing house (such as CDS & Co.) and that the resulting Acceptances (including the delivery thereof) may be subject to the rules, regulations, policies and other guidelines established from time to time by the applicable clearing house and that such Lender will be required to comply with the same at all times. The Borrower hereby consents to the deposit (by or on behalf of a Lender) of any Acceptance in the book-based system maintained by a recognized clearing house, and to the sale or resale (on a without recourse basis to that Lender or its nominee) of the whole or any item or part of any interest whatsoever held by that Lender or by any third party at any time in such Acceptance. Further, the Borrower agrees to abide by, and

to assist and co-operate with each Lender in observing, complying with and fulfilling (to the extent that the Lender may reasonably require the Borrower do so), any and all obligations, requirements and directions issued by or on behalf of an applicable clearing house with respect to Acceptances issued hereunder.

## **ARTICLE 6 CONVERSIONS AND ROLLOVERS**

### **6.1 Conversions**

6.1.1 *Generally.* Subject to the last sentence of this Subsection 6.1.1, the Borrower may request the Lenders to convert:

- (a) at any time, a Floating Rate Loan under the Revolving Facility or the Term Facility or a portion thereof into a different Type of Advance available under the same Credit Facility;
- (b) on a Period End Date, a Libor Loan under the Revolving Facility or the Term Facility or a portion thereof into a different Type of Advance available under the same Credit Facility; or
- (c) on a Period End Date, an issue of Acceptances under the Revolving Facility or the Term Facility into a different Type of Advance available under the same Credit Facility,

upon delivering a Borrowing Request to the Agent specifying both the amount and Type of the Advance to be converted and the amount and Type of the requested resulting Advance and the Credit Facility under which it is outstanding. The relevant provisions of this Agreement applicable to a Drawdown under the Revolving Facility and availability of the same Type as the Advance which will result from the Conversion (as well as any portion of the Advance which is not being converted, whether under the Revolving Facility or the Term Facility) must be satisfied to effect any such requested Conversion (including the notice provisions contained in Section 2.4), save that (y) the Interest Period for any Libor Loan and the Term for any issue of Acceptances resulting from any such conversion must have a Period End Date falling on or before the Maturity Date for the applicable Credit Facility and (z) the Borrower must ensure that Interest Periods and Terms are selected in a manner so that Section 4.2 is complied with (without requiring prepayment of a Libor Loan during its Interest Period or of an Acceptance during its Term).

6.1.2 *Same Currency Denomination.* If the Borrower has requested a Conversion of an Advance to a Type of Advance denominated in the same currency, no payment shall be required to be made by the Borrower to the Lenders on such Conversion, save to the extent required by Section 6.3 if the resulting Advance is an issue of Acceptances.

6.1.3 *Different Currency Denomination.* If the Borrower has requested a Conversion of an Advance to a Type of Advance denominated in a different currency, the Borrower shall repay the Advance (or relevant portion) being converted and, subject to the foregoing provisions of this Section 6.1 and receipt by the Agent of such repayment, the Lenders shall, subject to

Section 11.4, make the Type of Advance requested on the Conversion to the Borrower on the Conversion Date in the same manner as a Drawdown.

6.1.4 *Acceptances.* If the Borrower has requested a Conversion into an issue of Acceptances, each Lender shall, except as otherwise provided in Sections 5.10 and 5.11 and subject to Section 11.4 and the foregoing provisions of this Section 6.1, accept Drafts and purchase and take delivery of its Rateable Share of the resulting issue of Acceptances for its own account on the Conversion Date in the manner provided for in Section 6.3.

## **6.2 Rollovers**

6.2.1 *Libor Loans.* At or before 10:00 a.m. on the Business Day before the Quotation Date for each Libor Loan, unless the Borrower was entitled to deliver, and has previously delivered, to the Agent a Borrowing Request requesting a Conversion in accordance with Section 6.1 or a Repayment Notice, the Borrower shall, if it is entitled to do so in accordance with the provisions of Subsection 6.2.3, deliver a Borrowing Request to the Agent requesting a Rollover and selecting the next Interest Period applicable to the relevant Libor Loan, which new Interest Period shall commence on the current Period End Date of such Libor Loan and expire on or before the Maturity Date. If the Borrower fails to deliver any such request or notice to the Agent and fails to repay such Libor Loan on the current Period End Date, then the relevant Libor Loan shall be deemed to be converted to a US Base Rate Loan in the same principal amount on the current Period End Date.

6.2.2 *Acceptances.* At or before 10:00 a.m. two (2) Business Days before the Period End Date of an issue of Acceptances, unless the Borrower was entitled to deliver, and has previously delivered, to the Agent a Borrowing Request requesting a Conversion in accordance with Section 6.1 or a Repayment Notice, the Borrower shall, if it is entitled to do so in accordance with Subsection 6.2.3, deliver a Borrowing Request to the Agent requesting a Rollover and selecting the Term applicable to the resulting issue of Acceptances which shall commence on the current Period End Date of such maturing issue of Acceptances and expire on or before the Maturity Date. If the Borrower requests such a Rollover and is so entitled to do so, each Lender shall accept Drafts and purchase and take delivery of its Rateable Share of the resulting issue of Acceptances for its own account on the Rollover Date in the manner provided for in Section 6.3.

6.2.3 *Limitations.* The relevant provisions of this Agreement applicable to a Drawdown and availability of the same Type of Advance as the Advance which will result from the Rollover (as well as any portion of the Advance which is not being repaid or rolled over on such Rollover Date) must be satisfied to effect any Rollover requested under this Agreement (including the applicable notice provisions contained in Section 2.4).

## **6.3 Conversions to and Rollovers of Acceptances**

On the Conversion Date of any Advance being converted to an issue of Acceptances, and on the Rollover Date of any issue of Acceptances, each Lender shall accept Drafts and purchase and take delivery of its Rateable Share of the resulting issue of Acceptances for its own account in the manner provided for in Section 5.5, save that in lieu of remitting the Net Acceptance Proceeds of its Rateable Share of such resulting issue of Acceptances to the

Agent on the Borrowing Date of such resulting issue of Acceptances, each Lender shall retain such Net Acceptance Proceeds for its own account and the Borrower shall pay to the Agent for the account of each Lender on that Borrowing Date the amount by which the aggregate face amount of each Lender's Rateable Share of such resulting issue of Acceptances exceeds such Net Acceptance Proceeds.

#### **6.4 Not a Repayment**

Neither a Rollover nor a Conversion of an Advance shall constitute a repayment or Drawdown by the Borrower, but rather shall constitute a continuation or change in the form of credit being extended by the Lenders to the Borrower. The Borrower shall repay each such Advance resulting from any Rollover or Conversion to the Lenders in accordance with the provisions of this Agreement as if such Advance had resulted from a Drawdown on the Rollover Date or Conversion Date.

### **ARTICLE 7 STANDBY INSTRUMENT PROVISIONS**

#### **7.1 Issuance**

The following provisions shall apply to the issuance of Standby Instruments under a Credit Facility:

- (a) A Standby Instrument may be requested by the Borrower to be issued by a Lender in Canadian Dollars or US Dollars or, with the prior consent of the relevant Lender, any other currency. Unless the Agent otherwise agrees, the Lender that is the Swing Line Lender shall be the Issuing Bank for all Standby Instruments.
- (b) The aggregate Credit Amount of all Standby Instruments outstanding under the Credit Facilities may not exceed CAD5,000,000 at any time. Standby Instruments with an initial Credit Amount of less than CAD50,000 may only be issued under the Swing Line, unless the Agent otherwise consents. In addition, an Issuing Bank shall have the right, in its sole discretion, to limit the expiry date of any Standby Instrument. Following the occurrence of a Default, the Issuing Bank shall also have the right, in its sole discretion, to renew or extend the expiry date of any Standby Instrument or to amend any Standby Instrument.
- (c) The Borrower may not request the issuance of any Standby Instrument (i) if the aggregate Credit Amount of all Advances under the relevant Credit Facility would, after the issuance of the Standby Instrument in question, exceed the Swing Line Commitment or Total Revolving Commitment, as the case may be, or (ii) having a term which would extend beyond the applicable Maturity Date.
- (d) The Borrower shall provide the Issuing Bank with the proposed form and content of such Standby Instrument no less than two (2) Business Days before the requested issuance of the Standby Instrument. The foregoing documentation must specify (i) the stated amount of the Standby Instrument requested, (ii) the requested date of issuance of such Standby Instrument, which must be a Business

Day falling within the Availability Period for the applicable Credit Facility, (iii) the date on which such requested Standby Instrument is to expire, which must be on or before the Maturity Date, and (iv) whether the requested Standby Instrument is a Documentary Credit, Letter of Guarantee or Standby Letter of Credit. If the relevant Standby Instrument is being issued under the Revolving Facility, the Borrower shall also deliver to the Agent a copy of the foregoing documentation together with a Borrowing Request for the issuance of the requested Standby Instrument.

- (e) Upon receipt of the information and documentation in compliance with this Section 7.1 and subject to such changes to the form thereof as the applicable Issuing Bank may reasonably require, the applicable Issuing Bank shall, subject to Section 11.3, (or may, if the requested Standby Instrument is to be issued under the Swing Line), on the requested issue date issue a Standby Instrument in accordance with the usual and customary business practices. In addition, any amendment or renewal of any Standby Instrument shall be deemed to be an issuance of a new Standby Instrument and shall be subject to the requirements set forth above.
- (f) An Issuing Bank may delegate its obligations to issue any Standby Instrument to any Affiliate of it and assign to such delegated Person (the “**Substitute Issuing Bank**”) its rights under this Agreement in relation thereto. Such Substitute Issuing Bank shall be entitled to rights identical to the rights of the delegating Issuing Bank in relation to such Standby Instrument had such Standby Instrument been issued by such Issuing Bank.

## **7.2 Reimbursement by the Borrower**

**7.2.1 Authorization.** The Borrower unconditionally and irrevocably authorizes an Issuing Bank to pay the amount of any demand made on the Issuing Bank in accordance with the terms of any Standby Instrument issued for its account on demand without requiring proof of the Borrower’s agreement that the amount so demanded was due and notwithstanding that the Borrower may dispute the validity of any such demand or payment.

**7.2.2 Indemnity.** The Borrower shall indemnify and save an Issuing Bank harmless on a full indemnity basis from and against any and all payments and losses and expenses which it may make, suffer or incur arising in any manner whatsoever out of the issuance of any Standby Instrument, including the making of, or refusal to make, any payments demanded thereunder (including any court costs and legal costs incurred in connection with any proceedings to restrain the Issuing Bank from making, or to compel the Issuing Bank to make, any such payment), save that the Borrower shall not be obliged to so indemnify the Issuing Bank to the extent such losses and expenses are determined by a Final Judgment to have directly resulted from the wilful misconduct or gross negligence of the Issuing Bank. This indemnity shall be unconditional, shall not be subject to any qualification or exception whatsoever, except as expressly provided for in the preceding sentence, and shall not be lessened, invalidated or otherwise prejudiced for any reason whatsoever, including by reason of (i) any lack of validity or enforceability of the Standby Instrument, (ii) any claim, set-off, defence or other right the Borrower may have against

the beneficiary of the Standby Instrument, including any claim that a demand for payment under the Standby Instrument is fraudulent or (iii) any of the matters referred to in Section 7.4.

7.2.3 *Good Faith Payments.* Notwithstanding any other provision of this Agreement to the contrary, any payment made by an Issuing Bank in good faith in response to any demand for payment under any Standby Instrument shall be deemed to have been properly made, shall be binding upon the parties hereto and shall oblige the Borrower to reimburse and indemnify the Issuing Bank for such payment under Subsection 7.2.2.

7.2.4 *Standby Instrument Disbursement.* Any payment, loss and expense made or incurred by an Issuing Bank referred to in Subsection 7.2.2 shall be deemed to be an Advance under the relevant Credit Facility made by the Issuing Bank on the date such payment, loss and expense is incurred in the amount and currency (or the equivalent amount in Canadian Dollars or US Dollars determined at such Issuing Bank's spot rate) of such payment, loss and expense.

### **7.3 Refunding of Advances Amongst Lenders**

7.3.1 *Deemed Advances.* Any Standby Instrument Disbursement deemed to have been made as an Advance under the Revolving Facility shall be deemed to have been made by the Issuing Bank on behalf of the Revolving Lenders by way of Canadian Prime Rate Loan (if denominated in Canadian Dollars) or US Base Rate Loan (if denominated in US Dollars).

7.3.2 *Adjustments.* If a Standby Instrument Disbursement is deemed to have been made by an Issuing Bank on behalf of the Revolving Lenders under the Revolving Facility:

- (a) the Issuing Bank shall forthwith notify the Agent of the amount and currency of such Advance;
- (b) upon receipt of the notice referred to in paragraph (a) above, the Agent will determine the amount of adjusting payments required to be made amongst the Revolving Lenders to ensure that their respective shares in outstanding Advances under the Revolving Facility, including the Standby Instrument Disbursement, equal their respective Rateable Shares of the Revolving Facility;
- (c) each of the Revolving Lenders shall advance to the Agent the amount of the adjusting payment required of it pursuant to paragraph (b) above;
- (d) the Agent shall, upon receipt from the Revolving Lenders, advance to the applicable Issuing Bank the amount of the adjusting payments required to be paid to such Issuing Bank as determined pursuant to paragraph (c) above; and
- (e) the Borrower shall be obliged to repay the relevant Standby Instrument Disbursement to the Revolving Lenders in their respective Rateable Shares.

7.3.3 *Participations.* If adjusting advances pursuant to Subsection 7.3.2 cannot for any reason be made or the Revolving Lenders for any reason would not as a result thereof share rateably in the aggregate amount of the Advances outstanding under the Revolving Facility in their respective Rateable Shares based on their respective Revolving Commitments in effect before any reduction of Commitments takes effect pursuant to Section 15.2, each Revolving

Lender hereby agrees that it shall forthwith purchase from the relevant Issuing Bank, such participations in the Advances outstanding under the Revolving Facility as shall be necessary to cause the Revolving Lenders to share in such Advances rateably based on their respective Revolving Commitments.

7.3.4 *Failure by Lender to Advance.* If a Revolving Lender (a “**Defaulting Lender**”) fails to make payment on the due date therefor of any amount due from it pursuant to Subsection 7.3.3 (the balance thereof for the time being unpaid being referred to in this Subsection 7.3.4 as an “**overdue amount**”) then until the Defaulting Lender has made payment of the overdue amount (plus interest as provided below) in full (and without in any way limiting the rights of the Issuing Bank in respect of such failure):

- (a) the Defaulting Lender shall not be entitled to receive any payment in respect of the Credit Facilities or otherwise in respect of any Secured Document; and
- (b) the overdue amount shall bear interest payable by the Defaulting Lender to the Issuing Bank at the rate payable by the Borrower in respect of the Loan Obligations which gave rise to such overdue amount.

#### **7.4 Issuing Bank Not Liable**

7.4.1 *Waiver.* An Issuing Bank shall not have any obligation, responsibility or liability for, or duty to inquire into, the sufficiency, authorization, execution, signature, endorsement, correctness, genuineness or legal effect of any certificate or other document presented to it pursuant to any Standby Instrument and the Borrower assumes all risks with respect to the same, including all risks of the acts or omissions of any beneficiary of any Standby Instrument with respect to the use by any beneficiary of any Standby Instrument. Without limiting the generality of the foregoing, the Issuing Bank shall not have any obligation, responsibility or liability:

- (a) for the validity or genuineness of certificates or other documents delivered under or in connection with any Standby Instrument that appear on their face to be in order, even if such certificates or other documents should in fact prove to be invalid, fraudulent or forged;
- (b) for errors, omissions, interruptions or delays in transmission or delivery of any messages by mail, cable, telegraph, telecopy, e-mail, internet, wireless or otherwise, whether or not they are in code;
- (c) for errors in translation or for errors in interpretation of technical terms or for errors in the calculation of amounts demanded under any Standby Instrument;
- (d) for any failure or inability by the Issuing Bank or anyone else to make payment under any Standby Instrument as a result of any Applicable Law or by reason of any control or restriction rightfully or wrongfully exercised by any Person asserting or exercising governmental or paramount powers;
- (e) for any other consequences arising from causes beyond the control of the Issuing Bank; or

- (f) for any error, neglect or default of any correspondent of the Issuing Bank or of any advising, confirming, negotiating or paying bank,

and none of the above shall lessen, invalidate or otherwise prejudice any of the rights of the Issuing Bank hereunder or the obligations of the Relevant Borrower under Subsection 7.2.2.

7.4.2 *ICC Rules.* Save to the extent expressly provided otherwise in this Article 7, the rights and obligations between an Issuing Bank and the Borrower with respect to each Standby Instrument shall be determined in accordance with the applicable provisions of the (a) Uniform Customs and Practice for Documentary Credits (2007 Revision), ICC Publications 600 or (b) the International Standby Practices - ISP98, ICC Publication No. 590, as applicable.

## **7.5 Standby Instrument Fees**

7.5.1 *Revolving Lenders.* The Borrower shall pay a fee in Canadian Dollars to the Agent for the account of each of the Revolving Lenders based on the Credit Amount of each Standby Instrument issued or renewed under the Revolving Facility which shall be in the amount determined by the Agent to be equal to the sum of the products for each day during the term of such Standby Instrument obtained by multiplying (a) the Credit Amount thereof at the end of the day multiplied by (b) the quotient of (i) the Applicable Margin divided by (ii) 365. Such fee shall be paid quarterly in arrears on the third Business Day of each calendar quarter until the Credit Amount of such Letter of Guarantee or Standby Instrument is reduced to nil, at which time the final payment of such fee shall be paid.

7.5.2 *Fronting Fee.* The Borrower shall pay a fronting fee to the Issuing Bank issuing or renewing any Letter of Guarantee or Standby Letter of Credit under the Revolving Facility for its own account calculated and payable in the same manner as the fee in relation thereto is calculated and payable under Subsection 7.5.1, save that reference to the Applicable Margin in clause (b) thereof shall be replaced by reference to 0.125% per annum.

7.5.3 *Standby Instruments under the Swing Line.* The Borrower shall pay a fee to the Swing Line Lender in relation to each Standby Instrument issued or renewed under the Swing Line which shall be in the amount determined by the Swing Line Lender to be equal to the greater of (a) the product obtained by multiplying (i) the initial maximum amount available to be drawn upon under such Standby Instrument multiplied by the Applicable Margin multiplied by (iii) the quotient of (A) the number of days in the term of the Standby Instrument divided by (B) 365 and (b) CAD500. Such fee shall be paid in advance on the date such Standby Instrument is issued or renewed and, unless the Swing Line Lender otherwise agrees, shall be paid in the same currency denomination as the currency denomination of the Standby Instrument. All amounts paid to the Swing Line Lender pursuant to this Subsection 7.5.3 shall be retained by the Swing Line Lender for its own account.

## ARTICLE 8 INTEREST AND FEE CALCULATIONS AND CHANGES IN CIRCUMSTANCES

### 8.1 Interest

8.1.1 *Canadian Prime Rate Loans.* The Borrower shall pay interest on the outstanding principal amount of each Canadian Prime Rate Loan borrowed by it under each of the Credit Facilities calculated and payable from the Borrowing Date of such Canadian Prime Rate Loan until the date converted or deemed to be converted to another Type of Advance in accordance with the provisions hereof or the date due to be repaid hereunder, as applicable, at a percentage rate per annum equal to the sum of (a) the Canadian Prime Rate plus (b) the Applicable Margin.

8.1.2 *US Base Rate Loans.* The Borrower shall pay interest on the outstanding principal amount of each US Base Rate Loan borrowed by it under each of the Credit Facilities calculated and payable from the Borrowing Date of such US Base Rate Loan until the date converted or deemed to be converted to another Type of Advance in accordance with the provisions hereof or the date due to be repaid hereunder, as applicable, at a percentage rate per annum equal to the sum of (a) the US Base Rate plus (b) the Applicable Margin.

8.1.3 *Libor Loans.* The Borrower shall pay interest on the outstanding principal amount of each Libor Loan borrowed by it under each of the Revolving Facility and the Term Facility calculated and payable from each Borrowing Date of such Libor Loan until the date converted or deemed to be converted to another Type of Advance in accordance with the provisions hereof or the date due to be repaid hereunder, as applicable, at a percentage rate per annum during each Interest Period relative to such Libor Loan equal to the sum of (i) LIBOR for that Interest Period plus (ii) the Applicable Margin.

8.1.4 *Overdue Amounts.* If any sum payable by the Borrower under any provision of this Agreement is not paid when due and payable hereunder (whether on its stipulated due date, on demand, on acceleration or otherwise), the Borrower shall pay interest on the outstanding balance thereof at the percentage rate of interest per annum equal to the sum of (i) the Canadian Prime Rate, if the overdue sum is denominated in Canadian Dollars, or (as applicable) the US Base Rate, if the overdue sum is denominated in US Dollars plus (ii) the Applicable Margin for Floating Rate Loans plus, if an Event of Default has not occurred, to the extent permitted by applicable law, (iii) two percent (2%) per annum.

### 8.2 Fees in Respect of Acceptances

The Borrower shall pay to the Agent for the account of each Lender a Stamping Fee on the relevant Borrowing Date with respect to each Draft issued by the Borrower and accepted by that Lender under each of the Revolving Facility and the Term Facility calculated and payable at the time and in the manner specified in Article 5.

### 8.3 Standby Instrument Fees

The Borrower shall pay to the Agent (for Standby Instruments issued under the Revolving Facility) for the account of the Revolving Lenders or the Swing Line Lender (for

Standby Instruments issued under the Swing Line) the Standby Instrument Fees payable pursuant to and in accordance with Article 7.

#### **8.4 Standby Fee**

8.4.1 *Revolving Facility.* The Borrower shall pay to the Agent for the account of the Revolving Lenders a standby fee in relation to their respective Revolving Commitments based on the unused portion of the Revolving Facility payable in Canadian Dollars which shall be in the amount determined by the Agent to be equal to the sum of the products for each day during the Availability Period for the Revolving Facility of (a) the amount by which the Total Revolving Commitment exceeds the aggregate Credit Amount of all Advances under the Revolving Facility at the end of the day multiplied by (b) the fraction of (i) the Applicable Margin divided by (ii) 365.

8.4.2 *Swing Line.* The Borrower shall pay to the Swing Line Lender for its own account a standby fee in relation to the Swing Line Commitment based on the unused portion of the Swing Line payable in Canadian Dollars which shall be in the amount determined by the Swing Line Lender to be equal to the sum of the products for each day during the Availability Period for the Swing Line of (a) the amount by which the Swing Line Commitment exceeds the aggregate Credit Amount of all Advances under the Swing Line at the end of the day multiplied by (b) the fraction of (i) the Applicable Margin divided by (ii) 365.

8.4.3 *Payment Dates.* The next payment of each of the standby fees payable under Subsections 8.4.1 and 8.4.2 (which, for certainty, shall be for the period commencing on the Third Amended Closing Date and ending on December 31, 2008) will be made on January 6, 2009. Thereafter the Borrower shall pay these standby fees quarterly in arrears for each calendar quarter on the third Business Day of the following calendar quarter. The final payment of each of these standby fees will be made on the Maturity Date of the applicable Credit Facility or any earlier date of termination of the Total Revolving Commitment or the Swing Line Commitment, as applicable.

#### **8.5 Other Fees**

The Borrower shall pay to the Agent for the account of the Lenders an arrangement fee at the time and in the amount stipulated in the Third Fee Letter.

#### **8.6 Interest and Fee Calculations and Payments**

8.6.1 *General.* Interest payable on any amount under this Agreement shall be (a) calculated upon the daily outstanding balance of such amount from (and including) the date it is first outstanding or advanced until (but excluding) the date it is paid or repaid in full to the Senior Lender entitled thereto, (b) paid in the same currency in which such amount is denominated and (c) payable in arrears on each Interest Payment Date and on the date the final balance thereof is paid or repaid in full based upon the actual number of days elapsed in the relevant period of calculation. Interest payable on each such amount shall be payable both before and after demand, default and judgment at the applicable rate set out in Section 8.1 with interest on overdue interest at the same rate (except to the extent provided otherwise in Subsection 8.1.4).

8.6.2 *Day Count Fraction.* The rates of interest per annum payable on or in respect of Floating Rate Loans and Standby Fee are expressed on the basis of a 365 day year, as applicable. Each Stamping Fee, Acceptance Rate, CDOR and BA Reference Rate is expressed on the basis of a 365 day year. The rates of interest per annum payable on or in respect of Libor Loans are expressed on the basis of a 360 day year.

8.6.3 *Interest Act Compliance.* For the purposes of the *Interest Act* (Canada), any rate of interest made payable under the terms of this Agreement at a rate or percentage (the “**Contract Rate**”) for any period that is less than a consecutive 12 month period, such as a 360 or 365 day basis, (the “**Contract Rate Basis**”), is equivalent to the yearly rate or percentage of interest determined by multiplying the Contract Rate by a fraction, the numerator of which is the number of days in the consecutive 12 month period commencing on the date such equivalent rate or percentage is being determined and the denominator of which is the number of days in the Contract Rate Basis.

8.6.4 *No Deemed Reinvestment.* The principle of deemed reinvestment of interest shall not apply to any interest, discount or Fee calculation under this Agreement.

8.6.5 *Rates are Nominal Rates.* The rates of interest, discount and Fees stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

8.6.6 *Changes in Floating Rates.* Changes in each Floating Rate will cause an immediate adjustment of interest payable on or in respect of the corresponding Floating Rate Loans outstanding from time to time, without the necessity of any notice to the Borrower.

## **8.7 Increased Costs**

If any Change in Law:

- (a) subjects any Senior Lender (or its Holding Body Corporate) to, or causes the withdrawal or termination of a previously available exemption with respect to, any Taxes or changes the basis of taxation of payments owing to any Senior Lender or increases any Taxes payable by any Senior Lender (or its Holding Body Corporate) on or in respect of payments of principal, interest, Fees or other amounts payable by the Borrower to that Senior Lender under this Agreement or any other Loan Document (excluding any imposition or increase in the rate of Taxes payable on the net income or capital of any Senior Lender (or its Holding Body Corporate));
- (b) imposes, modifies or deems applicable any reserve, liquidity, cash, margin, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits with or for the account of, or loans or commitments by, or any other acquisition of funds for loans by, any Senior Lender, (or its Holding Body Corporate), or on any unutilized portion of any Credit Facility, or on any obligation of any Senior Lender under any Loan Document;

- (c) imposes on any Senior Lender (or its Holding Body Corporate) any Taxes on reserves or deemed reserves in respect of the undrawn portion of any Credit Facility;
- (d) requires any Senior Lender (or its Holding Body Corporate) to maintain any capital adequacy or additional capital requirement (including a requirement which affects that Senior Lender's (or its Holding Body Corporate's) allocation of capital resources to its obligations) in respect of any Credit Facility, its Rateable Share in any Advance, any Loan Document or that Senior Lender's obligations hereunder or under any other Loan Document, or imposes any other condition or requirement with respect to the maintenance by any Senior Lender (or its Holding Body Corporate) of a contingent liability with respect to any Credit Facility, its Rateable Share in any Advance or any Loan Document; or
- (e) imposes on any Senior Lender (or its Holding Body Corporate) any other condition or requirement with respect to this Agreement, any other Loan Document or a Credit Facility,

and such Senior Lender (the "**Affected Senior Lender**") determines (which determination shall be conclusive and bind the Borrower) that such occurrence has the effect of:

- (f) increasing the cost to the Affected Senior Lender (or its Holding Body Corporate) of agreeing to make or making, maintaining or funding its Rateable Share in any Advance, any Loan Obligation or any portion of any thereof;
- (g) reducing the net income received by the Affected Senior Lender (or its Holding Body Corporate) in respect of any Credit Facility, its Rateable Share in any Advance, any Loan Document or any portion of any thereof;
- (h) directly or indirectly reducing the effective return to the Affected Senior Lender (or its Holding Body Corporate) under any Loan Document on its overall capital as a result of the Affected Senior Lender entering into such Loan Document or as a result of any of the transactions or obligations contemplated by such Loan Document; or
- (i) causing the Affected Senior Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by that Senior Lender under any Loan Document,

then, upon demand from time to time being made to the Borrower by the Agent on behalf of the Affected Senior Lender accompanied in each case by a certificate of the Affected Senior Lender documenting the relevant calculations of the compensation being claimed by the Affected Senior Lender, the Borrower shall pay, within three (3) Business Days from the date of demand, to the Agent for the account of the Affected Senior Lender such additional amounts as are set out in each such certificate in order to fully compensate the Affected Senior Lender (or its Holding Body Corporate) for such additional cost, reduction, payment, foregone interest or other return.

## 8.8 Market Disruption

8.8.1 *Libor Loans.* If at any time prior to the commencement of a proposed Interest Period any Lender determines (which determination shall be conclusive and bind the Borrower) that:

- (a) by reason of circumstances affecting the London interbank market, or any bank participants therein, adequate and fair means do not exist for ascertaining the rate of interest with respect to a Libor Loan during the proposed Interest Period;
- (b) deposits in US Dollars are not being offered to that Lender in the London interbank market in the ordinary course of business;
- (c) the making or continuing of the Rateable Share of that Lender in any Libor Loan during the proposed Interest Period has been made impracticable by the occurrence of any change in national or international financial, political or economic conditions or currency exchange rates or exchange control, or an event (including an act of terrorism) which materially and adversely affects the London interbank market;
- (d) LIBOR for the proposed Interest Period does not accurately reflect the effective cost to that Lender of funding its Rateable Share in any Libor Loan for the proposed Interest Period; or
- (e) the Agent is unable to determine LIBOR for the proposed Interest Period of the Libor Loan,

(a “**Libor Disruption Event**”), then that Lender (the “**Affected Senior Lender**”) may give notice of such determination to the Agent who will promptly notify the Borrower. Thereafter, and until the Agent notifies the Borrower and the Affected Senior Lender that the Libor Disruption Event no longer exists or no longer applies, the Borrower’s right to require such Affected Senior Lender to make its Rateable Share of any such Libor Loan available in the manner requested shall be suspended and the Affected Senior Lender shall, subject to Section 8.9, instead make its Rateable Share available by way of an advance in US Dollars which shall bear interest payable in the same manner as any US Base Rate Loan.

8.8.2 *Acceptances.* If at any time on or prior to the proposed first day of the Term of a proposed issue of Acceptances the Agent determines (which determination shall be conclusive and bind the Borrower) that:

- (a) the issuance or discount of any Acceptances for the proposed Term thereof has been made impossible or impracticable by reason of the occurrence of any event affecting the Canadian money markets or any national or international financial, political, terrorist or economic event;
- (b) there does not exist a normal money market in Canada for the purchase and sale of bankers’ acceptances or such money market has been disrupted by the occurrence of an extraordinary event or an act of terrorism; or

- (c) the Agent is unable to determine CDOR for the proposed Term of the proposed issue of Acceptances,

(a “**BA Disruption Event**”) then the Agent will promptly notify the Borrower and each of the other Lenders of such determination. Thereafter, and until the Agent notifies the Borrower and the Lenders that the BA Disruption Event no longer exists or no longer applies, the Borrower’s right to request an Advance by way of Acceptances shall be suspended and any Borrowing Request given by the Borrower with respect to any proposed issue of Acceptances that has not yet been made shall be deemed to be replaced by a Borrowing Request for a Canadian Prime Rate Loan in the same Credit Amount as the requested issue of Acceptances.

## **8.9 Illegality**

If at any time any Lender determines (which determination shall be conclusive and bind the Borrower) that any Change in Law has made it unlawful, impossible or impracticable for that Lender to make, fund or maintain its Rateable Share in any Advance or to give effect to its obligations in respect of such Advance (an “**Affected Advance**”), that Lender (the “**Affected Senior Lender**”) will promptly notify the Agent who will promptly notify the Borrower. Upon giving such notice, the obligation of the Affected Senior Lender to make or continue its Rateable Share in any Affected Advance shall be suspended for so long as such condition exists. Thereafter, and until the Agent notifies the Borrower otherwise, the Borrower shall not have the right to require such Affected Senior Lender to make its Rateable Share of such Affected Advance available in the manner requested. Rather, except as otherwise provided in the next sentence, such Rateable Share shall be made available by way of an advance in the same currency which shall bear interest payable in the same manner as any Canadian Prime Rate Loan (if it is denominated in Canadian Dollars) or US Base Rate Loan (if it is denominated in US Dollars) from the expiry of the applicable Interest Period or Term of an issue of Acceptances. If, however, the Affected Advance is a Canadian Prime Rate Loan or a US Base Rate Loan, the Borrower shall forthwith prepay the Affected Senior Lender’s Rateable Share of such Affected Advance and the Affected Senior Lender shall not be required to make its Rateable Share of such Affected Advance available in any manner.

## **8.10 Withholding Taxes Generally**

8.10.1 *No Withholding; Gross-Up Requirement.* Subject to Subsection 8.10.4, each payment required to be made by the Borrower under each Loan Document shall be made without set-off or counterclaim, free and clear of, and without deduction or withholding for or on account of, any Taxes (other than the Senior Lender’s Own Taxes), except to the extent such deduction or withholding is required by any Applicable Law, as modified by the administrative practice of any relevant Governmental Body, then in effect. To the extent and each time the Borrower is so required to deduct or withhold Taxes (other than the Senior Lender’s Own Taxes) from or in respect of any such payment to or for the account of any Senior Lender (the “**Affected Senior Lender**”), then the Borrower will:

- (a) promptly notify the Agent of such requirement;
- (b) pay to the relevant Governmental Body when due the full amount required to be deducted or withheld (including the full amount of Taxes required to be deducted

or withheld from any additional amount paid by the Borrower to or for the account of the Affected Senior Lender under this Subsection 8.10.1);

- (c) promptly forward to the Agent an official receipt (or a certified copy), or other documentation reasonably acceptable to the Agent, evidencing such payment to such Governmental Body; and
- (d) forthwith pay to the Affected Senior Lender, in addition to the payment to which the Affected Senior Lender is otherwise entitled under such Loan Document, such additional amount as is necessary to ensure that the net amount actually received by the Affected Senior Lender (free and clear of, and net of, any such Taxes, including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower under this Subsection 8.10.1, whether assessed against the Borrower or the Affected Senior Lender) will equal the full amount the Affected Senior Lender would have received had no such deduction or withholding been required.

8.10.2 *Indemnity.* If the Borrower fails to pay to the relevant Governmental Body when due any Taxes that it was required to deduct or withhold under Subsection 8.10.1 in respect of any payment to or for the benefit of any Senior Lender under any Loan Document, or fails to promptly furnish the Agent with the documentation referred to in Subsection 8.10.1(c), the Borrower shall forthwith on demand indemnify such Senior Lender on a full indemnity after-Taxes basis from and against the full amount of any Taxes (including interest and penalties), losses and expenses which such Senior Lender may suffer or incur as a result of such failure.

8.10.3 *Indemnity for Additional Income Tax.* The Borrower shall also indemnify each Senior Lender on a full indemnity after-Tax basis, for any additional Taxes on net income that such Senior Lender may be obliged to pay as a result of the payment of additional amounts under this Section 8.10.

8.10.4 *Assignment.* If as a result of any assignment or participation of the whole or any part of any Commitment (including any Advance thereunder) of any Senior Lender made pursuant to Subsection 17.10.3, 17.10.4 or 17.10.5 before the occurrence of an Event of Default, the Borrower would be required to deduct or withhold Taxes and make increased payments to the assignee pursuant to Subsection 8.10.1, in excess of such increased payments which the Borrower would have been required to pay to the Lender pursuant to Subsection 8.10.1(d) had such assignment or participation not taken place, the provisions of Subsection 8.10.1(d) requiring such increased payments shall not apply to the extent of such excess.

## **ARTICLE 9 REPAYMENT AND PREPAYMENT**

### **9.1 Repayment of the Credit Facilities**

9.1.1 *Revolving Facility.* The Borrower shall repay on the Revolving Facility Maturity Date to the Agent for the account of each Revolving Lender such Lender's Rateable Share of each outstanding Advance made to the Borrower under the Revolving Facility. As of the date of this Agreement, the Revolving Facility Maturity Date is October 14, 2011.

9.1.2 *Maturity Date of the Swing Line.* The Borrower shall repay on the Swing Line Maturity Date to the Swing Line Lender each outstanding Swing Line Advance.

9.1.3 *Term Facility.* The Borrower shall repay the Advances outstanding under the Term Facility in twelve (12) approximately equal quarterly instalments in the Credit Amount of CAD933,333.33 each (the final instalment being in the amount of CAD933,333.34) due and payable on each of the dates falling three, six, nine, twelve, fifteen, eighteen, twenty-one, twenty-four, twenty-seven, thirty, thirty-three and thirty-six months after the Third Amended Closing Date. The Total Term Commitment shall permanently reduce on each such repayment date by the Credit Amount of each such repayment obligation.

9.1.4 *Termination.* The Commitment under each Credit Facility shall reduce to zero and terminate on the Maturity Date for that Credit Facility.

## **9.2 Voluntary Repayments**

9.2.1 *Generally.* The Borrower shall have the right at any time and from time to time to repay all or any portion of each Loan made to it under each Credit Facility which, in the case of a Libor Loan must be made on its current Period End Date. In the case of each of the Revolving Facility and the Term Facility, such right may only be exercised if the Borrower delivers a Repayment Notice to the Agent specifying the proposed repayment date (which must be no earlier than (i) the third (3<sup>rd</sup>) Business Day thereafter if a Libor Loan is being repaid, and (ii) the Business Day thereafter if a Floating Rate Loan is being repaid) and the amount of such Loan to be repaid (which must be in a principal amount of \$500,000 or a multiple of \$100,000 in excess thereof). The Borrower shall repay such Loan on such repayment date to the extent specified in such Repayment Notice.

9.2.2 *Effect of Voluntary Repayment.* Each Advance under the Revolving Facility and the Swing Line voluntarily repaid shall not affect the amount of the Commitments under that Credit Facility. Each Advance under the Term Facility voluntarily repaid shall permanently reduce the Total Term Commitment by the Credit Amount of the Advance prepaid and shall be applied to satisfy the scheduled repayment obligations provided for under Section 9.1.3 in inverse chronological order.

## **9.3 Cancellation**

9.3.1 *Revolving Facility and Swing Line.* The Borrower shall have the right at any time and from time to time to permanently cancel, without premium or penalty, all or any unused portion of the Revolving Facility and the Swing Line. Subject to the next sentence, such right may only be exercised by the Borrower delivering a Cancellation Notice to the Agent specifying the proposed effective date of cancellation (which must be no less than five (5) Business Days thereafter), each Credit Facility affected, and the amounts of each Credit Facility to be cancelled (which must be, in the case of each of the Revolving Facility, a multiple of CAD1,000,000). No reduction of the Total Revolving Commitment below the amount of CAD5,000,000 shall be permitted pursuant to this Section 9.3 unless the Swing Line Commitment has been permanently cancelled and reduced to nil or it is reduced at the same time and to the same extent. The Total Commitment (and each of the Total Revolving Commitment and the Swing Line Commitment

affected by the cancellation) shall permanently be cancelled and reduced on the effective date of each such cancellation in the amount so cancelled.

9.3.2 *Term Facility.* The Total Term Commitment shall permanently be cancelled and reduced at the close of business on the Third Amended Closing Date by the amount, if any, by which the Credit Amount of Advances outstanding under the Term Facility at that time is less than the initial Total Term Commitment.

#### **9.4 Application of Reductions in Total Commitment**

Each reduction in each of the Total Revolving Commitment and Total Term Commitment pursuant to Section 9.1, 9.2 or 9.3 shall ratably reduce the Commitments of the Lenders under the Revolving Facility and Term Facility, respectively.

#### **9.5 Mandatory Repayments of Credit Facilities**

On the date of each reduction of each Commitment of each Lender under the Revolving Facility or Term Facility pursuant to Section 9.1, 9.3 or 9.9, the Borrower shall repay to the Agent for the account of such Lender such amount on account of such Lender's Rateable Share of Advances made to the Borrower under each applicable Credit Facility as may be required to ensure that the Credit Amount of such Lender's Rateable Share of all Advances under each applicable Credit Facility does not exceed its Commitment under each applicable Credit Facility at that time after giving effect to that reduction. Such Lender shall apply any such amount so repaid as follows:

- (a) first, to repay its Rateable Share of Loans under each applicable Credit Facility;
- (b) second, to prepay to the Lender (or, at the option of each Lender, provide cash collateral for) the obligations of the Borrower under Section 5.7 in respect of Acceptances issued for the Borrower's account under that Credit Facility; and
- (c) third, as applicable, to prepay to each Issuing Bank (or, at the option of each Issuing Bank, provide cash collateral for) the Borrower's obligations under Subsection 7.2.2 in respect of outstanding Standby Instruments issued by each Issuing Bank until such Standby Instruments expire or are drawn upon, whereupon each Issuing Bank shall account to the Borrower for the amount so paid to it and remit any overpayment to the Agent for, subject to Section 15.2, return to the Borrower.

Each Issuing Bank receiving cash collateral pursuant to paragraph (c) above agrees to allow and remit to the Agent for, subject to Section 15.2, return to the Borrower, together with any overpayment referred to in paragraph (c) above, an amount determined by such Issuing Bank to be the amount of interest that would accrue on a deposit placed with it in the amount of the unapplied balance from time to time of such cash collateral at its prevailing rate for overnight deposits of comparable amount.

## **9.6 Facility Excesses by Reason of Foreign Currency Fluctuations**

9.6.1 *Revolving Facility.* If and each time the Agent determines (which determination shall be conclusive and bind the Borrower, absent manifest error) that the Credit Amount of all Advances under the Revolving Facility exceeds the Total Revolving Commitment by more than two percent (2%) by reason of fluctuations in exchange rates, the Agent may request (or if such excess is more than five percent (5%) of the Total Revolving Commitment shall request) the Borrower to repay the entire excess. Within five (5) Business Days of the receipt of any such request, the Borrower shall repay to the Agent for the account of the Revolving Lenders such Advances outstanding under the Revolving Facility as may be required to ensure that the Credit Amount of all Advances outstanding under the Revolving Facility does not exceed the limit prescribed under Subsection 2.2.1.

9.6.2 *Swing Line.* If and each time the Swing Line Lender determines (which determination shall be conclusive and bind the Borrower, absent manifest error) that the Credit Amount of all Advances under the Swing Line exceeds the Swing Line Commitment by reason of fluctuations in exchange rates, the Swing Line Lender may request the Borrower to repay the entire excess. Within five (5) Business Days of the receipt of any such request, the Borrower shall repay to the Swing Line Lender such Advances outstanding under the Swing Line as may be required to ensure that the Credit Amount of all Advances outstanding under the Swing Line does not exceed the Swing Line Commitment.

9.6.3 *Term Facility.* If and each time the Agent determines (which determination shall be conclusive and bind the Borrower, absent manifest error) that the Credit Amount of all Advances under the Term Facility exceeds the Total Term Commitment by more than two percent (2%) by reason of fluctuations in exchange rates, the Agent may request (or if such excess is more than five percent (5%) of the Total Term Commitment shall request) the Borrower to repay the entire excess. Within five (5) Business Days of the receipt of any such request, the Borrower shall repay to the Agent for the account of the Term Lenders such Advances outstanding under the Term Facility as may be required to ensure that the Credit Amount of all Advances outstanding under the Term Facility does not exceed the limit prescribed under Subsection 4.2.1.

## **9.7 Prepayment of Affected Senior Lenders**

The Borrower shall have the right to permanently cancel without premium or penalty all, but not part, of each Commitment of each Affected Senior Lender provided that no Default has occurred. Such right may only be exercised by the Borrower delivering a notice to the Agent advising of such cancellation and specifying the effective date of cancellation which must be no less than five (5) Business Days after and no later than 30 days after the date the Borrower receives notice that the relevant Lender has become an Affected Senior Lender. The Borrower shall prepay the Affected Senior Lender's Rateable Share of all outstanding Advances on such effective date of cancellation, the Affected Senior Lender's Commitments shall be cancelled and permanently reduce to nil and such Affected Senior Lender shall be released from its obligations to lend hereunder. Unless such Affected Senior Lender is replaced pursuant to Subsection 17.10.8, the Total Revolving Commitment, the Swing Line Commitment and the Total Term Commitment shall be cancelled and permanently reduced by the respective amounts

of the reduction in such Affected Lender's Revolving Commitment, Swing Line Commitment and Term Commitment.

## **9.8 Repayment Notice**

The Borrower shall deliver a Repayment Notice to the Agent by 11:00 a.m. on the day that falls at least three (3) Business Days in the case of Libor Loans, two (2) Business Days in the case of Acceptances and one (1) Business Day in the case of Floating Rate Loans, in each case, before any repayment is made pursuant to the Revolving Facility or the Term Facility.

## **9.9 Netting of Payments**

If on any date payments of principal or face amounts of Advances would be due and payable under the Revolving Facility or the Term Facility in the same currency by the Borrower to the Lenders and by those Lenders under the same Credit Facility to the Borrower, then, on such date, unless the Agent notifies those Lenders stating that netting is not to apply to such payments, the obligations of each such party to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Borrower to those Lenders exceeds the aggregate amount that would otherwise have been payable by those Lenders to the Borrower or *vice versa*, such obligations shall be replaced by an obligation upon whichever of the Borrower or those Lenders would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount.

## **9.10 Place of Payment of Principal, Interest and Fees**

9.10.1 *Payments to Senior Lenders Generally.* Each payment of principal of, or interest or Fees computed on, any Advance and each other amount owing by the Borrower under or otherwise in respect of any Loan Document, except for payments made in respect of the Swing Line, shall be made by the Borrower to the Agent for the account of the relevant Senior Lenders entitled thereto in the currency in which such Advance or other amount is denominated no later than noon (local time in the place of payment) in immediately available, freely transferable, cleared funds for value on the due date (or if such due date is not a Business Day on the Business Day next following) to the credit of the Agent's Accounts.

9.10.2 *Payments under the Swing Line.* Each payment of principal of, or interest or Fees computed on, any Swing Line Advance and each other amount owing by the Borrower under or otherwise in respect of the Swing Line, shall be made by the Borrower to the Swing Line Lender in the currency in which such Swing Line Advance or other amount is denominated no later than 2:00 p.m. (local time in the place of payment) in immediately available, freely transferable, cleared funds for value on the due date (or on the next Business Day if such due date is not a Business Day). The Swing Line Lender may debit the applicable Borrower's Account for each such payment.

9.10.3 *Late Day Payments.* If any payment is made to any Senior Lender on any day after the times specified in Subsections 9.10.1 or 9.10.2, as applicable, that payment shall, for the purposes of determining the amount of interest payable by the Borrower thereon hereunder, be deemed to have been made on the following Business Day.

## **ARTICLE 10 HEDGE PROVIDERS**

### **10.1 Designation of Hedge Providers**

The Borrower may from time to time designate any financial institution that is not a Lender, but that has offices in Canada and an approved credit rating, or which is otherwise acceptable to the Agent, to be a provider of Derivatives.

### **10.2 Accession of Hedge Provider**

Before any financial institution designated by the Borrower pursuant to Section 10.1 enters into any Derivative with the Borrower or any other Somerset Group Member, the Borrower shall cause that financial institution to enter into an Accession Agreement. Upon delivery to the Agent of such Accession Agreement, the Agent shall promptly execute and deliver such Accession Agreement to the parties thereto, whereupon this Agreement and each other Secured Document shall henceforth be read and construed as if such financial institution were party to the Intercreditor Agreement as a Hedge Provider having all of the rights and obligations of a Hedge Provider expressed therein and all references to any Hedge Provider in any Secured Document shall (to the extent the context so admits) be construed accordingly.

### **10.3 Number of Hedge Providers**

Unless the Required Lenders otherwise agree, there may only be one Hedge Provider at any time.

## **ARTICLE 11 CONDITIONS PRECEDENT**

### **11.1 Conditions Precedent to Closing**

Subject to Section 11.5, the Borrower shall ensure that the Agent has received all of the following in form and substance satisfactory to the Required Lenders on or before the Effective Time:

- (a) a Certificate of each Credit Party referred to in Schedule 5 as to (A) the Constitutional Documents of such Credit Party, (B) all necessary internal corporate, partnership, trust and/or other administrative or management action taken by such Credit Party to authorize the execution, delivery and performance of each New Loan Document to which it is party and the creation of the Liens and the consummation of the transactions contemplated thereby, (C) as to incumbency and true signatures of its Senior Officers and (D) as to such other matters as the Required Lenders may reasonably require;
- (b) original (A) certificate of status, compliance or good standing or similar certificate with respect to each Credit Party referred to in Schedule 5 for its jurisdiction of incorporation or formation and, if requested by the Agent, each jurisdiction in which any material part of its Business Assets are located or it carries on any material part of the Somerset Group Business and (B) reporting

issuer certificate for the Fund from each jurisdiction in which the Fund is a reporting issuer;

- (c) original copies of each of the New Loan Documents duly executed by each party thereto, together with any Collateral being perfected by possession by delivery to the Agent pursuant to any Security comprised therein, including all securities comprising Capital Stock of all Somerset Group Members;
- (d) a Certificate of the Borrower certifying that since June 30, 2008, there has been no Material Adverse Change;
- (e) a Certificate of the Borrower certifying that each of the representations and warranties of the Borrower deemed to be repeated in Section 13.2 is (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true, accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case as of the Effective Date as though made on and as of the Effective Date;
- (f) a Certificate of the Borrower certifying that no Default has occurred that is continuing on the Effective Date, nor would any Default result after giving effect to this Agreement;
- (g) a Certificate of the Borrower certifying that all of the conditions contained in Clauses (a) through (f) inclusive above have been satisfied;
- (h) a Borrowing Base Report with respect to the month ended September 30, 2008;
- (i) a duly signed direction from the Borrower to the Agent directing the Agent to pay (i) all Fees and other amounts due and payable to the Senior Lenders pursuant to or otherwise in respect of this third amended and restated credit agreement and (ii) all fees, costs and expenses (invoiced or estimated) payable to the Lenders' Counsel pursuant to or otherwise in respect of this Agreement;
- (j) a report on the matters referred to in this Section 11.1 from the Lenders' Counsel addressed to the Senior Lenders; and
- (k) such other agreements, documents and instruments as the Required Lenders may reasonably require.

## **11.2 Entry Into Effect of the Third Amendment and Restatement**

Upon satisfaction (or waiver pursuant to Section 11.5) of each of the conditions set forth in Section 11.1, this Agreement shall amend and restate the Second Amended Credit Agreement in its entirety and the Second Amended Credit Agreement as so amended and restated is hereby ratified and confirmed by the parties hereto. This Agreement is not intended by the parties to, and shall not constitute, a payment, discharge, satisfaction or novation of any obligation of the Borrower to the Senior Lenders, including the whole or any item or part of the

Loan Obligations (as defined in the Second Amended Credit Agreement) remaining outstanding and owing to the Senior Lenders until paid in full in accordance with the provisions of this Agreement. The Borrower hereby confirms to the Senior Lenders its Loan Obligations and the validity and effectiveness of the Liens created under the Security (each as defined in the Second Amended Credit Agreement) and agrees that such Security continues in full force and effect in accordance with its terms (amended, as applicable, by the New Loan Documents), and that such Security shall constitute part of the Security (as defined herein) and secure the Secured Obligations as defined herein. With effect from the Effective Time, each Advance outstanding under the Revolving Facility, the Swing Line and the Term Facility (each as defined in the Second Amended Credit Agreement) shall continue as an Advance outstanding under the applicable Credit Facility specified hereby, in the same amount and form or Type and shall be repaid by the Borrower hereunder accordingly.

### **11.3 Conditions to all Drawdowns**

Subject to Section 11.5, the Borrower shall not request, and the Lenders shall not be obliged to make or allow, any Drawdowns, including the first Drawdown, under any Credit Facility unless each of the conditions set forth in paragraphs (a) to (k) inclusive of Section 11.1 have been and remain satisfied or waived by the Required Lenders and unless:

- (a) each of the representations and warranties of the Borrower deemed to be repeated in Section 13.2 is (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true, accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case as of the date such Drawdown is requested and as of the proposed Drawdown Date as though made on and as of each such date;
- (b) no Default has occurred that is continuing on the date such Drawdown is requested or on the proposed Drawdown Date, nor would any Default result after giving effect to the requested Drawdown; and
- (c) each of the terms and conditions applicable to such Drawdowns contained in this Agreement shall have been fully complied with.

### **11.4 Conditions to Conversions and Rollovers**

Subject to Section 11.5, the Lenders shall not be obliged to make or allow, and the Borrower shall not be entitled to request, any Conversion to a Libor Loan or an issue of Acceptances or any Rollover unless each of the conditions set forth in paragraphs (a) to (k) inclusive of Section 11.1 have been and remain satisfied or waived by the Required Lenders and unless in respect of such Conversion or Rollover:

- (a) each of the representations and warranties deemed to be repeated under Section 13.2 in respect of such Conversion or Rollover is (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true,

accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case as of the date such Conversion or Rollover is requested and as of the proposed Conversion Date or Rollover Date;

- (b) no Default has occurred that is continuing on the date such Conversion or Rollover is requested or on the proposed Conversion Date or Rollover Date, nor would any Default result after giving effect to the requested Conversion or Rollover; and
- (c) each of the terms and conditions applicable to such Conversion or Rollover contained in this Agreement shall have been fully complied with.

## **11.5 Waiver**

The conditions set forth in Sections 11.1, 11.2, 11.3 and 11.4 are inserted for the sole benefit of the Lenders and may be waived by the Required Lenders, in whole or in part, (with or without terms or conditions) for any purpose at any time without prejudicing the rights of the Lenders at any time thereafter to require compliance with such conditions for that or any other purpose.

## **ARTICLE 12 SECURITY**

### **12.1 Initial Security**

To secure the due payment and performance of the Secured Obligations, the Borrower shall deliver to the Agent, or cause the delivery to the Agent of, each of the agreements, documents and instruments (each in form and substance satisfactory to the Agent) listed in Schedule 5 to be executed and/or delivered by each Credit Party referred to in Schedule 5 on or before the Effective Time, save and except for any of those items listed in the Post-Closing Undertaking.

### **12.2 Additional Security from Somerset Group Members**

12.2.1 *Generally.* Subject as otherwise provided in Subsection 12.2.2, to better secure the due payment and performance of the Secured Obligations owing by the Borrower, and as a further condition to the right of the Borrower to borrow hereunder, the Borrower shall cause:

- (a) each Person that becomes a Somerset Group Member after the Effective Time to deliver to the Agent contemporaneously with it becoming a Somerset Group Member:
  - (i) a Guarantee of the Secured Obligations owing by the Borrower in favour of the Senior Lenders; and
  - (ii) security over all of the Business Assets of such Somerset Group Member to secure the payment and performance of such Guarantee and any other Secured Obligations owing by it;

- (b) each Person owning the Capital Stock in each Somerset Group Member referred to in paragraph (a) above (the “**Pledgor**”) (i) if such Somerset Group Member is not the Borrower, to issue a Guarantee if it has not already done so and (ii) to pledge and deliver the securities evidencing that Capital Stock pursuant to a security agreement to the Agent to secure the payment and performance of the Secured Obligations owing by the Pledgor; in each case contemporaneously with its becoming a Somerset Group Member;
- (c) a third party legal opinion from the Borrower’s Counsel concerning the Person, Guarantee and Security, referred to in paragraphs (a) and (b) above to be delivered to the Agent contemporaneously with such Person first becoming a Somerset Group Member;
- (d) each item listed in the Post-Closing Undertaking (if any) to be provided to the Agent within the time frame provided for therein;
- (e) each Somerset Group Member that becomes party to a Material Leasehold after the Effective Time to (i) execute a Material Leasehold charge in relation thereto in favour of the Agent and deliver same, together with a third party legal opinion from the Borrower’s Counsel, within 30 days of such agreement becoming a Material Leasehold and (ii) obtain and deliver to the Agent an acknowledgment from the landlord to that Material Leasehold within such 30 day period (provided that the Lender will consider in good faith any request for a waiver of this provision relative to any Material Leasehold if the Borrower provides commercially reasonable grounds to do so); and
- (f) each Somerset Group Member with property located at a Material Warehouse Facility after the Effective Time to obtain and deliver to the Agent a bailee waiver from the operator of that Material Warehouse Facility within 30 days of such location becoming a Material Warehouse Facility (provided that the Lenders will consider in good faith any request for a waiver of this provision relative to any Material Warehouse Facility if the Borrower provides commercially reasonable grounds to do so).

The agreements, documents and instruments evidencing each such Guarantee, Security, charge, acknowledgment and third party legal opinion must be in form and substance satisfactory to the Agent and the Lenders’ Counsel acting reasonably.

#### 12.2.2 *Exceptions.*

- (a) Neither Somerset UK nor any other Subsidiary of the Borrower that is not already a Secured Somerset Group Member shall be obliged to provide the Senior Lenders with the agreements, documents, instruments, Guarantees and Security contemplated by Subsection 12.2.1 so long as the portion of the EBITDA of the Borrower for any Test Period attributable to all Subsidiaries of the Borrower that are not Secured Somerset Group Members (“**Exempt Subsidiaries**”) does not exceed 15% of EBITDA of the Borrower for that Test Period.

- (b) No Somerset Group Member shall be required to grant Security over any IP License, real property lease or other agreement to the extent such Security is prohibited by the terms of such IP License, real property lease or other agreement without the consent of the other party thereto which has not been obtained.

### **12.3 Registration**

Unless the Agent notifies the Borrower otherwise, the Borrower shall cause the Borrower's Counsel and their respective agents to register the Security (or a financing statement, notice or other document in respect thereof) on behalf of the Agent in all offices where such Registration is necessary or of advantage, in the opinion of the Lenders' Counsel, to create, preserve, protect and perfect the Security and its validity, effect, priority and perfection at all times, including any land registry or land titles office.

### **12.4 Further Assurances**

The Borrower shall, forthwith and from time to time on request from the Agent, execute or cause to be executed, all such agreements, documents and instruments (including any change to any Loan Document) and do or cause to be done all such other matters and things which in the reasonable opinion of the Agent or the Lenders' Counsel may be necessary or of advantage to give the Senior Lenders (so far as may be possible under any applicable law) the Liens and the priority intended to be created by the Loan Documents or to facilitate realization under such Liens. It is the intention of the parties that the Senior Lenders will, among other things, have (a) a first priority Lien, subject to Permitted Liens, over all Business Assets of each Somerset Group Member, excluding (i) Somerset Group Members that are not required to provide the Guarantee or the Security referred to in Section 12.2.1(a) because it is prohibited by applicable law from doing so or they are not required to do so by virtue of Subsection 12.2.2 and (ii) Somerset Group Members in relation to which the Required Lenders are prepared to dispense with such Security because the costs of granting such security are materially greater than the benefits to be received by the Senior Lenders therefrom (recognizing that the Lenders may require any such Somerset Group Member to provide such Security if these facts change), (b) a first priority Lien, subject only to Permitted Liens referred to in paragraph (a) of the definition of "Permitted Liens", over all Capital Stock of each Somerset Income Fund Group Member (other than the Fund, Somerset Trust and other than Class B Units of the Borrower) and each directly held Subsidiary of each Somerset Income Fund Group Member and (iii) such other Liens over the Business Assets of such Somerset Income Fund Group Members (excluding the Fund) as the Lender may from time to time reasonably require.

## **ARTICLE 13 REPRESENTATIONS AND WARRANTIES**

### **13.1 Borrower Representations and Warranties**

To induce the Lenders to make the Credit Facilities available to the Borrower, the Borrower represents and warrants to and in favour of the Senior Lenders as follows:

13.1.1 *Existence and Good Standing.* Each Credit Party is a corporation, general or limited partnership, trust or other legal Person duly and validly incorporated or formed,

organized and existing under the laws of its jurisdiction of incorporation or formation and has the legal capacity and right to own its Business Assets and to carry on its business in each jurisdiction in which its Business Assets are located or it carries on business.

13.1.2 *Authority.* Each Credit Party has the legal capacity and right to enter into the Loan Documents to which it is a party and do all acts and things and execute and deliver all agreements, documents and instruments as are required thereunder to be done, observed or performed by it in accordance with the terms and conditions thereof.

13.1.3 *Due Authorization.* Each Credit Party has taken all necessary action to authorize the execution and delivery of each Loan Document to which it is a party and the Principal Agreements, the creation and performance of its obligations thereunder and the creation of the Liens over its Business Assets and the consummation of the transactions contemplated thereby.

13.1.4 *Due Execution.* Each Credit Party has duly executed and delivered each Loan Document to which it is a party.

13.1.5 *Validity of Loan Documents - Non-Conflict.* None of the authorization, execution, delivery or performance of the Loan Documents, nor the creation of any Liens over the Business Assets of any Credit Party nor the consummation of any of the transactions contemplated thereby:

- (a) requires any Authorization to be obtained or Registration to be made (except such as have already been obtained or made and are now in full force and effect);
- (b) conflicts with, contravenes or gives rise to any default under (i) any of the Constitutional Documents or internal corporate, partnership, trust and/or other management resolutions of any Credit Party, (ii) the provisions of any indenture, instrument, agreement or undertaking to which any Credit Party is a party or by which any Credit Party or any of its Business Assets is or may become bound or (iii) any Applicable Law; or
- (c) has resulted or will result in the creation or imposition of any Lien (other than the Security) upon any of the Collateral.

13.1.6 *Enforceability.* Each Loan Document to which each Credit Party is a party constitutes a valid and legally binding obligation enforceable against it in accordance with its terms, subject only to bankruptcy, insolvency, winding-up, dissolution, administration reorganization, arrangement or other statutes or judicial decisions affecting the enforcement of creditors' rights in general and to general principles of equity under which specific performance and injunctive relief may be refused by a court in its discretion.

13.1.7 *Absence of Litigation.* There is no existing, pending or, to its knowledge, threatened Litigation against any Credit Party which, if adversely determined to any Credit Party or the Senior Lenders, could reasonably be expected to result in a Material Adverse Effect or, except for the Litigation notified to the Agent pursuant to Subsection 14.1.6(e) and the Litigation described in Schedule 6, could reasonably be expected to result in any single Award ordering any Somerset Group Member to pay more than the Threshold Amount or multiple Awards ordering

any Somerset Group Member or Somerset Group Members to pay more than the Threshold Amount in the aggregate. No event has occurred, and no state or condition exists, which could reasonably be expected to give rise to any such Litigation, except for the subject matter of any Litigation notified to the Agent pursuant to Subsection 14.1.6(e) and the Litigation described in Schedule 6, and there is no Award outstanding against any Somerset Group Member or any Credit Party which could reasonably be expected to have a Material Adverse Effect.

13.1.8 *Financial Statements.* Each financial report and financial statement of each Somerset Group Member, the Credit Parties and the Fund delivered to the Senior Lenders pursuant to or in connection with this Agreement have been prepared in accordance with GAAP (subject to year end audit adjustments and the absence of notes, where applicable), does not contain (or, if audited, would not contain) any qualification and fairly and accurately presents the financial information and the financial condition and results of operations of such Person contained therein as at their respective preparation dates.

13.1.9 *Accuracy of Information.* No information furnished by any Somerset Income Fund Group Member or Credit Party to the Senior Lenders in connection with any of the Loan Documents contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made and as of the date made. Each financial forecast and projection (“**Forecast**”), if any, prepared and furnished to the Senior Lenders pursuant to or in connection with any Loan Document was based upon assumptions believed to be reasonable by the Borrower as of the date of preparation; there has been no material change in such assumptions or in the information on which such assumptions are based which has not been disclosed in writing to the Senior Lenders; it has no reason to believe that any such Forecast as it relates to periods ending after its date of preparation, when read in conjunction with the related assumptions and other information disclosed in writing to the Senior Lenders, fails to reflect the Somerset Income Fund Group’s judgment as the most probable set of economic conditions and the Somerset Income Fund Group’s planned courses of action given these conditions, and such Forecast as it relates to periods already ended, does not reflect results which are materially higher than the anticipated actual results for such periods.

13.1.10 *Securities Law Filings.* The Fund has filed all continuous disclosure documents required to be filed by it pursuant to applicable securities legislation in each Province of Canada and the by-laws, rules, regulations and policies of each stock exchange on which any of its Capital Stock is listed (“**Securities Reports**”). Each Securities Report was, as of the date of filing, in compliance in all material respects with all applicable requirements under applicable securities legislation in each Province of Canada and the by-laws, rules, regulations and policies of each such stock exchange, and none of the Securities Reports, as of their respective filing dates, included any “misrepresentation” (as such term is defined in the *Securities Act* (Ontario)).

13.1.11 *Reporting Issuer.* The Fund is a “reporting issuer” or the equivalent in all Provinces and Territories of Canada (where such concept exists) and is not in default of any material requirement of any applicable securities legislation or the regulations, rules or policies thereunder. All “material changes” (as such term is defined in the *Securities Act* (Ontario)) in the affairs of the Fund have been publicly disclosed in compliance with the provisions of National Instrument 51-102 and the Borrower has no knowledge of any “material fact” (as such term is defined in the *Securities Act* (Ontario)) with regards to the Fund.

13.1.12 *Listing of Capital Stock.* The Fund's outstanding units are listed for trading on The Toronto Stock Exchange and the Borrower is not in default of any material requirement of any applicable by-laws, rules, regulations or policies of such stock exchange.

13.1.13 *No Material Adverse Change.* Since the date of the most recent audited financial statements of each of the Borrower and the Fund furnished to the Senior Lenders, there has been no Material Adverse Change.

13.1.14 *Compliance with Laws.* Each Credit Party is in material compliance with all Applicable Laws, save for non-compliance which is Immaterial.

13.1.15 *All Authorizations Obtained and Registrations Made.* Subject to the Post-Closing Undertaking, all Authorizations and Registrations necessary to permit each Credit Party to execute, deliver and perform each Loan Document to which it is party, grant any Guarantee and Security and consummate the transactions contemplated thereby and own its Business Assets and carry on its business have been obtained or effected and are in full force and effect, save and except for those Authorizations that have not been obtained and the consequences thereof are Immaterial. Each Credit Party is in compliance with the requirements of all such Authorizations and Registrations and there is no Award outstanding or Litigation existing, pending or, to its knowledge, threatened which could reasonably be expected to result in the revocation, cancellation, suspension or any adverse modification of any of such Authorizations and Registrations, except for any such Authorization or Registration the absence of which is Immaterial.

13.1.16 *No Default.* No Default has occurred which has not been either remedied (or otherwise ceased to be continuing) or expressly waived by the Required Lenders in writing.

13.1.17 *Real Property.* Each Somerset Group Member has a subsisting leasehold interest in, or good and marketable title to, in each case free and clear of all Liens, other than Permitted Liens, all of the real property leased or owned by it which are reflected as an asset in the latest financial statements of the Somerset Group provided to the Required Lenders, except for real property interests disposed in the ordinary course of business since the date of those financial statements in compliance with the provisions of this Agreement.

13.1.18 *Personal Property.* Each Somerset Group Member is the sole legal and beneficial owner of, free and clear of all Liens, other than Permitted Liens, all personal property reflected as an asset in the latest financial statements of the Somerset Group provided to the Senior Lenders, except for personal property disposed in the ordinary course of business since the date of those financial statements in compliance with the provisions of this Agreement.

13.1.19 *Intellectual Property.*

- (a) Each Somerset Group Member has used its Material Intellectual Property Rights in such manner as to preserve its rights therein including the use of proper notices indicating ownership of and/or rights to use its Material Intellectual Property Rights, to the extent reasonably necessary for the protection of its Material Intellectual Property Rights.

- (b) No Somerset Group Member is aware of any claim having been made that the use of any Material Intellectual Property Rights of any Somerset Group Member or the sale or licensing of any of the Software comprised therein does or may violate the rights of any other Person.
- (c) All Material IP Licences are in full force and effect unamended, each Somerset Group Member party thereto has duly observed and performed all of its covenants and obligations under each of the Material IP Licenses, except for non-observance and non-performance that is Immaterial, and, to the knowledge of each Somerset Group Member, there has not been any default under or breach of any Material IP Licenses by the other parties thereto.

13.1.20 *Somerset Group Organization.* Neither the Fund nor the Borrower has any Subsidiaries other than inactive Subsidiaries and those depicted in the organization chart set out in Schedule 7 and those notified to the Agent pursuant to Section 14.1.6(h). The owners that are Somerset Income Fund Group Members, beneficially and of record, of the issued Capital Stock of each such Subsidiary, are depicted in the organization chart set out in Schedule 7.

13.1.21 *Taxes.* Each Somerset Group Member has:

- (a) delivered or caused to be delivered all Income Tax, Sales Tax and other returns for Taxes which are now due to the appropriate Governmental Body;
- (b) paid and discharged all Taxes payable by it when due;
- (c) made provision for appropriate amounts in respect of any Taxes likely to be exigible in accordance with GAAP;
- (d) withheld and collected all Taxes required to be withheld and collected by it and remitted such Taxes to the appropriate Governmental Body when due; and
- (e) paid and discharged all Statutory Prior Claims when due,

and no assessment or appeal is, to its knowledge, being asserted or processed with respect to such returns, Taxes or Statutory Prior Claims, except for assessments or appeals respecting an aggregate Tax liability for the entire Somerset Group not exceeding fifty percent (50%) of the Threshold Amount.

13.1.22 *Solvency.* Each Somerset Group Member is Solvent.

13.1.23 *General Environmental Representations and Warranties.* With respect to the Environment:

- (a) to the knowledge of each Somerset Group Member, the Somerset Group Facilities and all real estate (including the buildings, erections and facilities constructed thereon) and appurtenances comprising or used in connection therewith, are and have at all times been owned, leased, managed, controlled or operated in compliance with all Environmental Laws for the period they have been owned,

leased, managed, controlled or operated by any Somerset Group Member (including its predecessors by Business Combination); and

- (b) to the knowledge of each Somerset Group Member all real estate (including the buildings, erections and facilities constructed thereon) and appurtenances comprising or used in connection with the Somerset Group Facilities were at all times owned, leased, managed, controlled or operated by the predecessors in title to such real estate in compliance with all Environmental Laws,

with the exception in all cases of matters which are Immaterial and in respect of which (i) disclosure has been made in Schedule 8 or to the Agent pursuant to Subsection 14.1.6 and (ii) non-compliance has not resulted in and could not reasonably be expected to result in, a loss and expense to any Somerset Group Member in an amount exceeding fifty percent (50%) of the Threshold Amount.

13.1.24 *Employee Relations.* There are no strikes, work stoppages or grievances pending or, to its knowledge, threatened between any Somerset Group Member and any of its employees (including unions representing employees), other than employee grievances arising in the ordinary course of business which could not reasonably be expected to result in work stoppages.

13.1.25 *Investment Company; Public Utility Holding Company.* No Somerset Income Fund Group Member is, and after giving effect to any Borrowing no Somerset Income Fund Group Member will be, an “investment company” or a company “controlled” by an “investment company” as such terms are defined in the United States *Investment Company Act of 1940*, as amended. No Somerset Income Fund Group Member is subject to regulation under the United States *Federal Power Act*, the United States *Interstate Commerce Act* or the United States *Public Utility Holding Company Act of 1935*, as amended, or any other Applicable Law which restricts its ability to incur indebtedness or its ability to consummate the transactions contemplated by the Loan Documents.

13.1.26 *Federal Reserve Regulations.* No Somerset Income Fund Group Member is engaged, directly or indirectly, principally or as one of its important activities, in the business of extending, or arranging for the extension of, credit for the purpose of purchasing or carrying margin stock (as defined in Regulation U). Neither the borrowing of any Advance hereunder, nor the use of the proceeds thereof, will (i) be used to purchase or carry any “margin stock” within the meaning of Regulation U, or (ii) violate or be inconsistent with the provisions of Regulation U or Regulation X. None of the assets which are subject to any limitation on sale, pledge or other restriction under the Loan Documents have been, or will be, margin stock.

13.1.27 *ERISA Matters.* Neither any Somerset Income Fund Group Member nor any ERISA Affiliate maintains or contributes to any Benefit Plan, Multiemployer Plan or Non-US Pension Plan. Each Plan which is intended to be qualified under Section 401(a) of the Internal Revenue Code as currently in effect either (a) has received a favourable determination letter from the IRS that the Plan is so qualified or (b) an application for determination of such tax-qualified status will be made to the IRS prior to the end of the applicable remedial amendment period under Section 401(a) of the Internal Revenue Code as currently in effect, and the applicable Somerset Income Fund Group Member or an ERISA Affiliate shall use commercially reasonable efforts to obtain promptly a determination letter with respect to such application. No Somerset

Income Fund Group Member maintains or contributes to any employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees after termination of employment other than as required by Section 601 of ERISA. Each Somerset Income Fund Group Member is in compliance in all material respects with the responsibilities, obligations and duties imposed on it by ERISA and the Internal Revenue Code with respect to all Plans. No Benefit Plan has incurred any accumulated funding deficiency (as defined in Sections 302(a)(2) of ERISA and 412(a) of the Internal Revenue Code) whether or not waived. Neither the Borrower nor any ERISA Affiliate (i) has engaged in a non-exempt prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code (other than a non-exempt prohibited transaction in respect of which (A) disclosure has been made to the Agent pursuant to Subsection 14.1.13 and (B) non-compliance has not resulted in and could not reasonably be expected to result in, a loss and expense to any Somerset Group Member in an amount exceeding fifty percent (50%) of the Threshold Amount) or (ii) has taken or failed to take any action which could reasonably be expected to constitute or result in a Termination Event. Neither any Somerset Income Fund Group Member nor any ERISA Affiliate has incurred any potential liability under Sections 4063, 4064, 4069, 4204 or 4212(c) of ERISA. Neither any Somerset Income Fund Group Member nor any ERISA Affiliate has incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid. Schedule B to the most recent annual report filed with the IRS with respect to each Benefit Plan and furnished to the Agent is complete and accurate. Since the date of each such Schedule B, there has been no material adverse change in the funding status or financial condition of the Benefit Plan relating to such Schedule B. Neither any Somerset Income Fund Group Member nor any ERISA Affiliate has (x) failed to make a required contribution or payment to a Multiemployer Plan or (y) made a complete or partial withdrawal under Sections 4203 or 4205 of ERISA from a Multiemployer Plan. Neither any Somerset Income Fund Group Member nor any ERISA Affiliate has failed to make a required instalment or any other required payment under Section 412 of the Internal Revenue Code on or before the due date for such instalment or other payment. Neither any Somerset Income Fund Group Member nor any ERISA Affiliate is required to provide security to a Benefit Plan under Section 401(a)(29) of the Internal Revenue Code due to a Benefit Plan amendment that results in an increase in current liability for the plan year. No Somerset Group Member has, by reason of the transactions contemplated hereby, any obligation to make any payment to any employee pursuant to any Plan or existing contract or arrangement, except as disclosed in writing to the Agent. The Borrower has given to the Agent copies of all of the following: each Benefit Plan and related trust agreement (including all amendments to such Benefit Plan and trust) in existence as at the Effective Time and in respect of which the Borrower or any ERISA Affiliate is currently an "employer" as defined in Section 3(5) of ERISA, and the most recent actuarial report, determination letter issued by the IRS and Form 5500 filed in respect of each such Benefit Plan in existence; a listing of all of the Multiemployer Plans currently contributed to by the Borrower or any ERISA Affiliate with the aggregate amount of the most recent annual contributions required to be made by the Borrower and all ERISA Affiliates to each such Multiemployer Plan, any information which has been provided to the Borrower or an ERISA Affiliate regarding withdrawal liability under any Multiemployer Plan and the collective bargaining agreement pursuant to which such contribution is required to be made; and as to each employee welfare benefit plan within the meaning of Section 3(1) of ERISA which provides benefits to employees of any Somerset Group Member after termination of employment other than as required by Section 601 of ERISA, the plan document (or, if no

plan document is available, a written description of the benefits provided under such plan), the actuarial report for such plan (if any), the aggregate amount of the most recent annual payments made to, or on behalf of, terminated employees under each such plan, and any information about funding to provide for such welfare benefits.

13.1.28 *Non-US Employee Benefit Matters.* Each Non-US Employee Benefit Plan is in compliance in all material respects with all Applicable Laws and the respective requirements of the governing documents for such Plan. No Somerset Group Member contributes to any Non-US Pension Plan with a defined benefit element. With respect to any Non-US Employee Benefit Plan maintained or contributed to by any Somerset Group Member (other than a Non-US Pension Plan), reasonable reserves have been established in accordance with prudent business practice or where required by best accounting practices in the jurisdiction in which such Plan is maintained having regard to tax legislation. The aggregate unfunded liabilities, after giving effect to any reserves for such liabilities, with respect to such Plans could not be reasonably expected to result in a material liability. There is no Litigation or claims (other than routine claims for benefits) pending or, to the knowledge of the Borrower, threatened against any Somerset Income Fund Group Member or any ERISA Affiliate with respect to any Non-US Employee Benefit Plan.

13.1.29 *Anti-Terrorism and Anti-Money Laundering.*

- (a) Compliance. The Borrower is not, and, after making due inquiry, no Person who owns a controlling interest in or otherwise controls the Borrower is, (i) listed on the Specially Designated Nationals and Blocked Persons List (the “**SDN List**”) maintained by the United States Office of Foreign Assets Control (“**OFAC**”), United States Department of the Treasury, and/or on any other similar list (“**Other Lists**” and, collectively with the SDN List, the “**Lists**”) maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, “**OFAC Laws and Regulations**”); or (ii) a Person (a “**Designated Person**”) either (A) included within the term “designated national” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the “**Executive Orders**”). None of the Somerset Income Fund Group Members (x) is a Person or entity with which any Senior Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) is a Person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Orders or (z) is affiliated or associated with a Person or entity listed in the preceding clause (x) or clause (y). To the knowledge of the Borrower, no Somerset Income Fund Group Member, any of their Affiliates, nor any brokers or other lenders acting in any capacity in connection with the Advances hereunder (I) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

- (b) Funds Invested in Somerset Group Members. Each Somerset Group Member has taken reasonable measures appropriate to the circumstances (and in any event as required by Applicable Law), with respect to each holder of a direct or indirect interest in such Person, to assure that funds invested by such holders in such Person are derived from legal sources (“**Anti-money Laundering Measures**”). The Anti-money Laundering Measures have been and shall be undertaken in accordance with the *Bank Secrecy Act*, 31 U.S.C. §§ 5311 et seq. (“**BSA**”), and all applicable laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957 (collectively with the BSA, “**Anti-money Laundering Laws**”).
- (c) No Violation of Anti-money Laundering Laws. To the Borrower’s knowledge, no Somerset Income Fund Group Member nor any holder of a direct or indirect interest in any Somerset Income Fund Group Member (i) is under investigation by any governmental authority for, or has been charged with, or convicted of, money laundering under 18 U.S.C. §§ 1956 and 1957, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (ii) has been assessed civil penalties under any Anti-money Laundering Laws, or (iii) has had any of its funds seized or forfeited in an action under any Anti-money Laundering Laws.
- (d) Compliance with Anti-money Laundering Laws. Each Somerset Income Fund Group Member has taken reasonable measures appropriate to the circumstances (in any event as required by Applicable Law), to ensure that such Person is and shall be in compliance with all Anti-money Laundering Laws and applicable laws, regulations and governmental guidance for the prevention of terrorism, terrorist financing and drug trafficking.

### **13.2 Repetition of Representations and Warranties**

The representations and warranties made in Section 13.1 shall be deemed to be repeated by the Borrower on each Borrowing Date by reference to the facts and circumstances then existing, it being understood that to the extent such representations and warranties relate solely to a specifically identified earlier date they need only be true and correct as of such earlier date, and subject to any changes thereto resulting from any actions expressly permitted under Article 14 or from any waiver of non-compliance therewith in writing from the Agent.

### **13.3 Nature of Representations and Warranties**

The representations and warranties made in Section 13.1 or deemed repeated in Section 13.2 shall survive the execution and delivery of this Agreement and the making of each Borrowing notwithstanding any investigations or examinations which may be made by or on behalf of the Senior Lenders or Lenders’ Counsel, and the Senior Lenders shall be deemed to have relied on such representations and warranties in the making of each Borrowing.

## ARTICLE 14 COVENANTS OF THE BORROWER

### 14.1 Affirmative Covenants

Until Payment in Full of all Loan Obligations owing by the Borrower to each of the Senior Lenders, the Borrower agrees with the Senior Lenders that it will, and (to the extent the context so admits) it will cause each other Somerset Income Fund Group Member and Credit Party to, duly perform and comply with, each of the following affirmative covenants (except to the extent waived by the Required Lenders):

14.1.1 *Punctual Payment.* Each Credit Party will duly and punctually pay each sum payable by it under each Loan Document to which it is a party at the time and place and in the manner provided for in such Loan Document.

14.1.2 *Conduct of Business.* Except to the extent expressly otherwise permitted by Subsection 14.2.6, each Somerset Group Member will maintain in good standing and full force and effect its legal existence in its present jurisdiction of incorporation or formation and the Authorizations, Registrations, legal capacity, rights and qualifications necessary to carry on the Somerset Group Business and own its Business Assets in each jurisdiction in which it carries on business or its Business Assets are located, save for jurisdictions in which its Business Assets are Immaterial.

14.1.3 *Compliance with Applicable Laws.* Each Somerset Group Member will comply in all material respects with Applicable Laws, save for non-compliance that is Immaterial.

14.1.4 *Compliance with Contracts.* Each Somerset Group Member will comply in all material respects with each of the contractual obligations owing by it to its customers, suppliers and other Persons, save for non-compliance that is Immaterial.

14.1.5 *Financial Records.* Each Somerset Income Fund Group Member will maintain complete records and books of account in accordance with GAAP.

14.1.6 *Financial Statements and Other Information.* The Borrower will deliver or cause to be delivered to the Agent (either in electronic (pdf) form or in sufficient paper copies to provide a copy for the Agent and each of the Lenders as the Agent may request):

- (a) as soon as practicable and in any event within 120 days after the end of each Fiscal Year, (i) the annual consolidated financial statements of each of the Borrower and the Fund prepared in accordance with GAAP audited by its Auditors (without qualification), (ii) accountant prepared (notice to reader) financial statements for each Subsidiary of each of the Fund (other than the Borrower) and each Subsidiary of the Borrower, (iii) an Annual Forecast and (iv) a Compliance Certificate from the Borrower prepared as at such Fiscal Year end;
- (b) as soon as practicable and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including the Fiscal Quarter ended September 30,

2008), (i) the unaudited quarterly consolidated financial statements of each of the Borrower and the Fund for that Fiscal Quarter as well as for the current Fiscal Year to that Fiscal Quarter end, each prepared in accordance with GAAP (subject to annual year end audit adjustments), consisting in each case of a balance sheet and statements of income and retained earnings (or deficit) and of changes in cash position, and (ii) a Compliance Certificate from the Borrower prepared as at such Fiscal Quarter end;

- (c) as soon as practicable and in any event within 30 days after the end of each calendar month (including the calendar month ended September 30, 2008), (i) monthly aged accounts receivable and (ii) a duly completed Borrowing Base Report;
- (d) as soon as it obtains knowledge of any Default, notice of such Default, together with an outline in reasonable detail of the action it is taking to remedy such Default;
- (e) as soon as it obtains knowledge of any Award or the commencement of any Litigation or dispute affecting any Somerset Income Fund Group Member or Credit Party or any of their respective Business Affairs which, either alone or when aggregated with all other such Litigation, has resulted in, or could reasonably be expected to result in, (i) a Material Adverse Effect, or (ii) any single Award ordering any Somerset Group Member to pay more than the Threshold Amount or multiple Awards ordering any Somerset Group Member or Somerset Group Members to pay more than the Threshold Amount in the aggregate, notice of such Award or Litigation; together in each case with an outline in reasonable detail of the particulars thereof, copies of all pleadings, Borrower's Counsel's assessment of the merits thereof and the action such Somerset Income Fund Group Member or Credit Party is taking in respect thereof;
- (f) as soon as any Somerset Group Member obtains knowledge of any Litigation or dispute pertaining to liabilities or breach of Environmental Laws which has resulted or could reasonably be expected to result in a loss and expense to any Somerset Group Member in an amount (or the Equivalent Amount in foreign currency) in excess of fifty percent (50%) of the Threshold Amount, notice of such Litigation or dispute, together with copies of all corresponding Orders, Awards and pleadings, a report on the status thereof and any assessment of the merits thereof by the Borrower's Counsel;
- (g) as soon as it obtains knowledge of any actual or threatened strikes or work stoppages, notice thereof containing an outline in reasonable detail of the expected resolution thereof;
- (h) upon creation or acquisition of any new Subsidiary of any Somerset Income Fund Group Member, notice thereof, together with a copy of the Constitutional Documents of such new Subsidiary;

- (i) promptly upon furnishing them to unitholders of the Fund, copies of all information circulars, management reports, financial statements and proxy statements furnished to the unitholders of the Fund;
- (j) promptly upon the release or filing thereof, copies of all registration statements, prospectuses, material change reports and annual, quarterly, monthly or other regular reports which the Fund files with the Ontario Securities Commission or any other securities' regulatory authority; and
- (k) from time to time, such additional information regarding any of the Business Affairs of the Somerset Income Fund Group as any Senior Lender may reasonably request.

14.1.7 *Rights of Inspection.* At any time and from time to time, upon reasonable prior written notice to any Somerset Income Fund Group Member, each Somerset Income Fund Group Member will permit any Representative of any Senior Lender, at the expense of the Borrower, to attend at the premises of such Somerset Income Fund Group Member and examine and make copies of any abstracts from the records and books of account of any Somerset Income Fund Group Member and to discuss any of the Business Affairs of any Somerset Income Fund Group Member with any of its directors, Senior Officers and with any of its Auditors or other Representatives.

14.1.8 *Maintenance of Properties.* Each Somerset Group Member will maintain in good repair, working order and condition (reasonable wear, tear and obsolescence excepted) its Business Assets (whether owned or held under lease), other than those which are Immaterial, and from time to time make or cause to be made all needed and appropriate repairs, renewals, replacements, additions and improvements thereto consistent with prudent business judgment.

14.1.9 *Maintenance of Insurance.* The Borrower will insure, or cause to be insured at all times, all of the Business Assets of the Somerset Group with financially sound and reputable insurance companies covering such Business Assets in an amount of at least their replacement value and against public liability, in at least such amounts and against at least such risks as are usually insured against by Persons of similar size and carrying on a similar business or holding similar Business Assets and the Borrower shall furnish to the Agent upon written request, full information as to the insurance carried. The Borrower shall cause the Agent to be named in each such policy as secured party or mortgagee and first loss payee and additional insured, as appropriate, in a manner acceptable to the Agent. Each policy of insurance shall contain a clause or endorsement requiring the insurer to give not less than 30 (subject to any mandatory statutory reduction to 15 days') days' prior written notice to the Agent in the event of cancellation of the policy for any reason whatsoever and a clause or endorsement stating that the interest of the Senior Lenders shall not be impaired or invalidated by any act or neglect of any Somerset Group Member or the owner of any premises for purposes more hazardous than are permitted by such policy. No Somerset Group Member will do or omit to be done anything which could breach or invalidate any such insurance and the Borrower will punctually pay all premiums and other amounts necessary for maintaining such insurance as the same become due. The Borrower shall obtain and, upon request, provide the Agent with certificates of insurance for and certified copies of the policies effecting the insurance required by this Section 14.1.9.

14.1.10 *Payment of Taxes and Claims.* Each Somerset Group Member will:

- (a) pay and discharge all lawful claims for labour, material and supplies when due;
- (b) deliver or cause to be delivered all Income Tax, Sales Tax and other Tax returns when they are due to the appropriate Governmental Body;
- (c) punctually pay and discharge all Taxes payable by it when due;
- (d) withhold and collect all Taxes required to be withheld and collected by it and remit such Taxes to the appropriate Governmental Body when due in the manner required by Applicable Law; and
- (e) pay and discharge all Statutory Prior Claims when due;

provided that, it shall not be a breach of this Subsection 14.1.10 if claims for any of the aforesaid amounts aggregating not more than fifty percent (50%) of the Threshold Amount for the entire Somerset Group are not paid when due so long as no enforcement action to collect any such claims is being taken against any Business Assets of any Somerset Group Member.

14.1.11 *Arm's Length Arrangements.* Each Somerset Group Member will only enter into an agreement, transaction or other arrangement with any Related Person or any other Person with whom it is not dealing at arm's length if such agreement, transaction or arrangement is made (a) on commercially reasonable terms (including normal trade terms, but excluding for certainty deferred payment terms) at fair market value and consistent with commercial relations between Unrelated Parties or (b) between the Borrower and those of its Subsidiaries that are Secured Somerset Group Members. This Subsection 14.1.11 shall not apply to employment agreements with Andrew Burgess and Gordon Gibson.

14.1.12 *Comply with Environmental Laws.* Each Somerset Group Member will cause its Representatives to:

- (a) manage and operate the Somerset Group Facilities in compliance with all Environmental Laws;
- (b) maintain all Authorizations and make all Registrations required under all Environmental Laws in relation to the Somerset Group Facilities and remain in compliance therewith; and
- (c) store, treat, transport, generate, otherwise handle and dispose of all Hazardous Materials and Waste owned, managed or controlled by it in compliance with all Environmental Laws,

with the exception of failure or non-compliance that is Immaterial provided that no loss and expense in excess of fifty percent (50%) of the Threshold Amount has been or could reasonably be expected to be incurred by any Somerset Group Member.

14.1.13 *ERISA and Analogous Notices.* The Borrower shall deliver or cause to be delivered to the Agent the following information and notices as soon as reasonably possible, and in any event within ten (10) Business Days:

- (a) after the Borrower or any ERISA Affiliate knows that a Termination Event has occurred, a written statement of a Senior Officer of the Borrower describing such Termination Event and the action, if any, which the Borrower or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto, and when known, any action taken or threatened by the IRS, DOL or PBGC (or any analogous foreign Governmental Body in relation to Non-US Pension Benefit Plans) with respect thereto;
- (b) after the Borrower, any ERISA Affiliate or any Somerset Group Member knows that a non-exempt prohibited transaction defined in Section 406 of ERISA or Section 4975 of the Internal Revenue Code has occurred, a statement of a Senior Officer of the Borrower describing such transaction and the action which the Borrower, any ERISA Affiliate or other Somerset Group Member has taken, is taking or proposes to take with respect thereto;
- (c) after the filing of the same with the IRS, a copy of each funding waiver request filed with respect to any Benefit Plan and all communications received by the Borrower or any ERISA Affiliate with respect to such request;
- (d) after the Borrower or any ERISA Affiliate receives notice of the PBGC's intention to terminate a Benefit Plan or to have a trustee appointed to administer a Benefit Plan, copies of each such notice;
- (e) after the Borrower or any ERISA Affiliate receives notice of any unfavourable determination letter from the IRS regarding the qualification of a Plan under Section 401(a) of the Internal Revenue Code, copies of each such notice and letter;
- (f) after the Borrower or any ERISA Affiliate receives notice from a Multiemployer Plan regarding the imposition of withdrawal liability, copies of each such notice;
- (g) after the Borrower or any ERISA Affiliate fails to make a required instalment or any other required payment under Section 412 of the Internal Revenue Code on or before the due date for such instalment or payment, a notification of such failure;
- (h) with respect to a Non-US Pension Plan, after any Somerset Group Member fails to make a required instalment or other payment in accordance with a schedule of contributions, according to the terms of such Non-US Pension Plan or as otherwise required by a foreign Governmental Body, a notification of such failure;
- (i) after the Borrower or any ERISA Affiliate knows (i) a Multiemployer Plan has been terminated, (ii) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, or (iii) the PBGC has instituted or will

institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan, notice of such events; and

- (j) after the Borrower receives reasonable advance written notice from any Senior Lender requesting the same, copies of any Non-US Employee Benefit Plan and related documents, reports and correspondence specified in such notice.

14.1.14 *ERISA Compliance.* The Borrower shall, and shall cause each other Somerset Income Fund Group Member to, and shall use its best efforts to cause its ERISA Affiliates who are not Somerset Income Fund Group Members to, establish, maintain and operate all Plans to comply in all material respects with the provisions of ERISA, the Internal Revenue Code, all other Applicable Laws and the respective requirements of the governing documents for such Plans.

14.1.15 *Non-US Employee Benefit Plan Compliance.* The Borrower shall, and shall cause each other Somerset Group Member to, establish, maintain and operate all Non-US Employee Benefit Plans to comply in all material respects with all Applicable Laws and the respective requirements of the governing documents for such Plans.

14.1.16 *Interest Holders.* The Borrower also shall require, and shall take reasonable measures to ensure compliance with the requirement, that no Person who owns any other direct or indirect interest in any Somerset Group Member is or shall be listed on any of the Lists or is or shall be a Designated Person. This Section 14.1.16 shall not apply to any Person to the extent that such Person's interest in any Somerset Group Member is through a US Publicly Traded Entity. If requested by any Senior Lender, the Borrower shall deliver to the Agent a schedule of the name, legal domicile address and (for entities) place of organization of each holder of a direct or indirect legal or beneficial interest in the Somerset Income Fund Group Members.

14.1.17 *Anti-Terrorism Policies.* The Borrower agrees to adopt and maintain adequate policies, procedures and controls to ensure that it is in compliance with all Anti-Terrorism Laws and related government guidance (such policies, procedures and controls are collectively, the “**Anti-Terrorism Policies**”). The Borrower consents to the disclosure to U.S. regulators and law enforcement authorities by each Senior Lender or any of its Affiliates of such information about any Somerset Income Fund Group Member and the owners of direct and indirect interests in any Somerset Income Fund Group Member that such Senior Lender reasonably deems necessary or appropriate to comply with applicable Anti-Terrorism Laws and Anti-money Laundering Laws.

14.1.18 *Notification; Quarantine Steps.* The Borrower shall immediately notify the Agent if such Person obtains knowledge that any holder of a direct or indirect interest in any Somerset Income Fund Group Member, or any director, manager or officer of any of such holder, (a) has been listed on any of the Lists, (b) has become a Designated Person, (c) is under investigation by any Governmental Body for, or has been charged with or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, or any violation of the BSA, (d) has been assessed civil penalties under any Anti-money Laundering Laws, or (e) has had funds seized or forfeited in an action under any Anti-money Laundering Laws.

14.1.19 *Use of Proceeds.* The Borrower shall use the proceeds of each Advance under each Credit Facility solely for the purposes described in Section 2.1, 3.1 or 4.1, as applicable.

## 14.2 Negative Covenants

Until Payment in Full of all Loan Obligations owing by the Borrower to each of the Senior Lenders, the Borrower agrees with the Senior Lenders that it will, and (where the context so admits) it will cause each other Somerset Income Fund Group Member to, duly perform and comply with each of the following negative covenants (except to the extent waived by the Required Lenders):

14.2.1 *Limitation on Indebtedness.* No Somerset Group Member will create, assume, incur, otherwise become liable upon or permit to exist any Indebtedness, other than:

- (a) Indebtedness secured by any Permitted Lien described in paragraphs (q) and (s) of the definition of “Permitted Liens”;
- (b) unsecured Indebtedness owing to Unrelated Parties in an aggregate outstanding amount for the entire Somerset Income Fund Group of up to fifty percent (50%) of the Threshold Amount;
- (c) Subordinated Debt;
- (d) Indebtedness under any Loan Document;
- (e) Out-of-the-Money Derivative Exposure under Derivatives permitted under Subsection 14.2.13;
- (f) Indebtedness owing by one Somerset Group Member to another; provided that the aggregate outstanding amount of all such Indebtedness owing by all Somerset Group Members that are not Secured Somerset Group Members to one or more other Somerset Group Members may not exceed 50% of the Threshold Amount; or
- (g) Indebtedness permitted under Subsection 14.2.2.

14.2.2 *Financial Assistance.* No Somerset Group Member will provide any financial assistance by means of a loan, guarantee or otherwise to any Person, other than:

- (a) to a Secured Somerset Group Member;
- (b) to a Somerset Group Member that is not a Secured Somerset Group Member so long as the aggregate value of all financial assistance permitted by this paragraph (b) for the entire Somerset Group does not exceed (on a cumulative basis from the First Amended Closing Date) 50% of the Threshold Amount; or
- (c) Permitted Investments.

14.2.3 *Sale of Assets.* No Somerset Income Fund Group Member will dispose of any of its Business Assets, except for:

- (a) disposals of inventory made in the ordinary course of carrying on its day to day business for cash or Cash Equivalent to Unrelated Parties;
- (b) disposals of any of its Business Assets to a Secured Somerset Group Member;
- (c) disposals of defaulted accounts in order to realize on them in a commercially reasonable manner; or
- (d) disposals of Business Assets in any period of four (4) consecutive Fiscal Quarters having a fair market value for the entire Somerset Group of up to 50% of the Threshold Amount;

provided that no Default has occurred or could reasonably be expected to occur as a consequence of such disposal.

14.2.4 *Disposals of Subsidiaries.* No Somerset Group Member will dispose of any Capital Stock in any Subsidiary of it, or permit any Subsidiary of it to issue Capital Stock to any Person other than another Somerset Group Member.

14.2.5 *Negative Pledge.* No Somerset Income Fund Group Member or Credit Party will create, incur, assume or otherwise become liable upon or permit to exist any Lien on, against or with respect to any Collateral, except for Permitted Liens and Liens which are subordinated to the Security.

14.2.6 *No Merger, Amalgamation, etc.* No Somerset Income Fund Group Member will enter into any merger, amalgamation, arrangement, consolidation, business combination, capital reorganization, liquidation, winding-up, dissolution or similar transaction (each, a “**Business Combination**”), except that any Somerset Group Member that is a Wholly-Owned Subsidiary of the Borrower may liquidate or dissolve voluntarily into the Borrower or another such Wholly-Owned Subsidiary or merge, consolidate, amalgamate or otherwise combine with and into any other Somerset Group Member that is a Wholly-Owned Subsidiary of the Borrower so long as:

- (a) no Default has occurred and is continuing at such time nor would any result from such Business Combination;
- (b) the successor resulting from the Business Combination (the “**Merged Entity**”) possesses all the property, rights, privileges and franchises of each Somerset Group Member party to such Business Combination (each, a “**Merging Group Member**”) and assumes and is subject to all the obligations and liabilities of each such Merging Group Member under each Loan Document to which such Merging Group Member is party;
- (c) the benefits of each Loan Document to which each Merging Group Member is a party extend to the performance by the Merged Entity of its obligations under each Loan Document;

- (d) the validity, enforceability and effect of the Loan Documents, and the validity, effect, priority and perfection of the Security, shall not be affected in any adverse way;
- (e) the Merged Entity is a Wholly-Owned Subsidiary of the Borrower and a Somerset Group Member; and
- (f) legal counsel for each Merging Group Member and the Merged Entity shall have provided an opinion to the Agent, in form and substance satisfactory to the Agent, addressing such matters referred to in paragraphs (a) to (e) above as the Agent shall reasonably require.

14.2.7 *Nature of Business.* No Somerset Group Member will change the nature of the Somerset Group Business or cease to carry on the Core Business or any substantial part thereof; and no Somerset Group Member will engage in any new business other than a business engaged solely in a Core Business.

14.2.8 *Limitation on Investments.* No Somerset Group Member will make any new Investments, other than:

- (a) Investments in Cash Equivalents;
- (b) Investments in sustaining Capital Expenditures in any existing Somerset Group Member;
- (c) An Investment in (i) a newly formed or acquired Wholly-Owned Subsidiary of the Borrower that is or within 30 days of creation or acquisition becomes a Secured Somerset Group Member or a Business Acquisition made by a Secured Somerset Group Member; provided that (A) the Borrower provides the Agent with quarterly *pro forma* financial statements and *pro forma* calculations of the financial covenants giving effect to such Investment and showing compliance therewith, (B) the EBITDA of such Wholly-Owned Subsidiary, or the impact of such Business Acquisition on EBITDA of the Borrower, as applicable, for the current Test Period is positive, (C) the Required Lenders, if they shall so request, must complete and be satisfied with their respective due diligence enquiries in respect of such Investments, and (D) the Required Lenders provide their written consent to such Investment if such Investment alone, or together with all other such Investments made in any Test Period, would exceed CAD2,000,000 (or the Equivalent Amount in foreign currency);
- (d) Investments made directly in another Somerset Group Member by way of Subordinated Debt, and not by way of purchase from any holder of such Subordinated Debt; or
- (e) Investments described in the First Amended Prospectus as taking place on or before the Closing Date,

provided that, in the case of paragraph (c), no Default has occurred or could reasonably be expected to occur after such Investment is made and such Investment is in a Core Business.

14.2.9 *Distributions.* No Somerset Group Member will declare, set apart for payment, make or pay any Distributions, except for Permitted Distributions. No Somerset Group Member that is a Subsidiary of the Borrower shall be restricted by its Constitutional Documents or become bound by any agreement, other than this Agreement or the Somerset US Note, from carrying out any Distributions.

14.2.10 *Restriction on Subsidiaries.* No Somerset Group Member will form or acquire, directly or indirectly, any Subsidiary, unless such Subsidiary becomes a Secured Somerset Group Member within 30 days of being formed or acquired and, in either case, the Investment made in such Subsidiary complies with the provisions of Subsection 14.2.8. With respect to any new such Subsidiary, the Borrower will provide the Agent with reasonable prior written notice of its intent to create or acquire such new Subsidiary and, upon incorporation or acquisition, with a copy of the Constitutional Documents of such Subsidiary. Each Somerset Group Member holding Capital Stock in such Subsidiary will pledge and deliver the certificates representing the entire Capital Stock held in each such Subsidiary to the Agent pursuant to the Security within 30 days of acquisition.

14.2.11 *Restriction on Fund Entities.* Neither the Fund nor Somerset Trust shall carry on any active business and shall limit its activities to acting as an Investment holding vehicle. The Fund shall not hold any Investments other than Cash Equivalent Investments and Capital Stock and Trust Notes of Somerset Trust. Somerset Trust shall not hold any Investments other than Class A Units. Somerset GP shall not carry on any business or hold any Investments, except in its capacity as general partner of the Borrower.

14.2.12 *Restrictions on Capital Stock.* The Borrower shall not issue any Capital Stock, except (i) on or before the First Amended Closing Date as contemplated by the First Amended Transaction Documents and this Agreement and (ii) Class A Units to Somerset Trust provided the certificates representing such Class A Units are pledged and delivered to the Agent pursuant to the Security upon issuance.

14.2.13 *Derivatives.* No Somerset Group Member will enter into any Derivative, except for the purpose of paying or hedging its actual or anticipated normal business capital expenditures and operating revenues and expenses or hedging its interest rate or currency exposure on its Debt. No Somerset Group Member shall enter into or permit any Derivative to remain outstanding if the aggregate Derivative Exposure of all Somerset Group Members under all Derivatives entered into with all Hedge Providers would at any time exceed the Equivalent Amount in Canadian Dollars of USD2,000,000.

14.2.14 *No Continuance.* No Somerset Group Member will continue under the laws of any other jurisdiction.

14.2.15 *Fiscal Year.* No Somerset Income Fund Group Member will change its fiscal year to any fiscal year other than to the Fiscal Year.

14.2.16 *Constitutional Documents.* No Somerset Income Fund Group Member will change its Constitutional Documents, except (a) to the extent permitted by Subsection 14.2.6 and (b) for any change that is Immaterial.

14.2.17 *Benefit Plans.* No Somerset Income Fund Group Member will:

- (a) engage, or permit any ERISA Affiliate who is a Somerset Group Member to engage, in any prohibited transaction described in Sections 406 of ERISA or 4975 of the Internal Revenue Code for which a statutory or class exemption is not available or a private exemption has not been previously obtained from the DOL;
- (b) permit to exist any accumulated funding deficiency (as defined in Sections 302 of ERISA and 412 of the Internal Revenue Code), with respect to any Benefit Plan, whether or not waived;
- (c) fail, or permit any ERISA Affiliate who is a Somerset Income Fund Group Member to fail, to pay timely required contributions or annual instalments due with respect to any waived funding deficiency to any Benefit Plan;
- (d) terminate, or permit any ERISA Affiliate who is a Somerset Income Fund Group Member to terminate, any Benefit Plan which would result in any liability of the Borrower or any ERISA Affiliate under Title IV of ERISA;
- (e) fail or permit any ERISA Affiliate who is a Somerset Group Member to fail to make any contribution or payment to any Multiemployer Plan which the Borrower or any ERISA Affiliate may be required to make under any agreement relating to such Multiemployer Plan, or any law pertaining thereto;
- (f) fail, or permit any ERISA Affiliate who is a Somerset Income Fund Group Member to fail, to pay any required instalment or any other payment required under Section 412 of the Internal Revenue Code on or before the due date for such instalment or other payment;
- (g) amend, or permit any ERISA Affiliate who is a Somerset Income Fund Group Member to amend, a Benefit Plan resulting in an increase in current liability for the plan year such that the Borrower or any ERISA Affiliate is required to provide security to such Plan under Section 401(a)(29) of the Internal Revenue Code;
- (h) permit any further unfunded liabilities with respect to any Non-US Pension Plan which would trigger a requirement to make a material increase in contributions to fund any such liabilities; or
- (i) fail, or permit any other Somerset Income Fund Group Member to fail, to pay any required contributions or payments to a Non-US Pension Plan on or before the due date for such required instalment or payment.

14.2.18 *Anti-Terrorism Laws.* No Somerset Income Fund Group Member will, directly or indirectly, (a) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Designated Person or any

other Person identified in any List, (b) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Anti-Terrorism Law, (c) knowingly repay any Advance with any funds derived from any unlawful activity with the result that the making of the Loans would be in violation of law, or (d) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrower shall deliver to the Agent any certification or other evidence requested from time to time by any Senior Lender in its reasonable discretion, confirming compliance with this Section 14.2.8).

14.2.19 *No Violation of Anti-Terrorism Laws.* No Somerset Income Fund Group Member shall (a) violate any of the prohibitions set forth in the Anti-Terrorism Laws applicable to it or the business that it conducts, and (b) require any Senior Lender to take any action that would cause that Senior Lender to be in violation of the prohibitions set forth in the Anti-Terrorism Laws, it being understood that any Senior Lender can refuse to honour any such request or demand otherwise validly made by the Borrower under this Agreement or any Loan Document.

14.2.20 *Competing Registrants.* No Somerset Group Member will enter into any further agreement, or create any new or additional Indebtedness in favour of, any Person referred to in the Post-Closing Undertaking as a “Competing Registrant” until a limitation of interest letter in form and substance satisfactory to the Agent is delivered to the Agent by that “Competing Registrant”, or the scope of the collateral classification that may be perfected by the registrations made by that “Competing Registrant” is limited by financing change statement in form and substance satisfactory to the Agent or all security registrations made by that “Competing Registrant” are discharged.

14.2.21 *Unperfected Bank Accounts.* No Somerset Group Member shall maintain any cash balance in any bank or other deposit account with any bank or other financial institution that is not subject to the first priority Lien of the Security (an “**Unperfected Bank Account**”), save and except that any Somerset Group Member that carries on an active business in any jurisdiction that requires a Control Account Agreement or other agreement amongst the Somerset Group Member concerned, the depository institution and the Agent to be in place in order to create such a first priority Lien in favour of the Senior Lenders, may maintain cash balances in an Unperfected Bank Account to the extent such cash balances arise in the ordinary course of conducting day to day business; provided that the aggregate sum of all cash balances in all Unperfected Bank Accounts maintained by any Somerset Group Member shall not at any time exceed the sum of (i) USD100,000 plus (ii) the aggregate amount of the next payroll of that Somerset Group Member plus (iii) the amount, if any, by which (A) cash expenditures of that Somerset Group Member projected to be made over the next 14 day period are projected to exceed (B) cash receipts projected to be received over the next 14-day period.

### **14.3 Financial Covenants**

Until Payment in Full of all Loan Obligations owing by the Borrower to each of the Senior Lenders, the Borrower agrees with the Senior Lenders that it will ensure that each of the following financial tests is complied with at all times (except to the extent waived by the Required Lenders):

14.3.1 *Total Debt/EBITDA Ratio.* The Total Debt/EBITDA Ratio for (i) each Test Period ending before December 31, 2009, shall not exceed 1.75:1, (ii) each Test Period ending on or after December 31, 2009 but before December 31, 2010 shall not exceed 1.50:1 and (iii) each Test Period on or after December 31, 2010 shall not exceed 1.00:1.

14.3.2 *Fixed Charge Coverage Ratio.* The Fixed Charge Coverage Ratio for each Test Period shall equal or exceed 1.00:1.

## **ARTICLE 15 EVENTS OF DEFAULT**

### **15.1 Events of Default**

Any default, breach, failure, event, state or condition described below shall constitute an Event of Default and a default by the Borrower under this Agreement:

15.1.1 *Non-Payment of Principal.* The Borrower fails to pay to any Lender any principal amount outstanding hereunder when due.

15.1.2 *Non-Payment of Interest and Other Amounts.* The Borrower fails to pay any interest, Fee or other amount (excluding principal) payable hereunder or under any other Loan Document when due and such failure continues unremedied for more than three (3) Business Days.

15.1.3 *Misrepresentation.* Any representation or warranty which is not already subject to a materiality qualification made or deemed made by any Somerset Income Fund Group Member or Credit Party in any Loan Document is found to have been false or misleading in any material respect or any representation or warranty which is subject to a materiality qualification made or deemed made by any Somerset Group Member or Credit Party in any Loan Document is found to have been false or misleading in any respect, in each case when made or deemed made.

15.1.4 *Financial Tests.* Any financial test contained in Section 14.3 is not complied with.

15.1.5 *Breach of Certain Covenants.* The Borrower fails to perform or comply with any provision or obligation contained in Article 12 or Subsections 14.2.1 to 14.2.9 inclusive, 14.2.11, 14.2.12, 14.2.14, 14.2.15 14.2.16, 14.2.20 and 14.2.21.

15.1.6 *Breach of Other Covenants.* Any Somerset Income Fund Group Member or Credit Party fails to perform or comply with any provision or obligation contained in any Loan Document to which it is a party and such failure continues unremedied for a period of 30 days after any Somerset Income Fund Group Member knows of such failure (other than those referred to in Subsections 15.1.1, 15.1.2, 15.1.3, 15.1.4 and 15.1.5 above).

15.1.7 *Cross-Default.* Any Somerset Group Member defaults under any one or more agreements, documents or instruments relating to Indebtedness (other than Indebtedness under this Agreement) in an aggregate amount exceeding the Threshold Amount and, if there is any cure period applicable to such default, such cure period lapses without the default being cured.

15.1.8 *Unsatisfied Judgments.* Any one or more Awards for the uninsured payment of money in an aggregate amount for the entire Somerset Group exceeding 50% of the Threshold Amount are rendered against any one or more of the Somerset Group Members and such Somerset Group Members do not discharge same in accordance with its terms, or procure a stay of execution thereof, or deposit with the Agent cash collateral or other security satisfactory to the Agent in the amount of such Awards to be set aside to pay such Awards and bearing interest at prevailing commercial rates agreed between the Agent and such Somerset Group Member accruing to the benefit of such Somerset Group Member, in each case within 30 days from the date of the entry of each such Award and in any event at least five (5) Business Days before any such Award may be executed upon.

15.1.9 *Enforcement of Liens.* Any one or more Persons entitled to any Liens on any Business Assets of any one or more Somerset Group Members having claims exceeding the Threshold Amount take possession of any such Business Assets or any one or more seizures, executions, garnishments, sequestrations, distresses, attachments or other equivalent processes in respect of claims against any one or more Somerset Group Member exceeding the Threshold Amount are issued or levied against all or any material part of the Business Assets of any one or more Somerset Group Members and such Somerset Group Members do not discharge the same or provide for the discharge in accordance with their terms, or procure a stay of execution thereof, or deposit with the Agent cash collateral or other security satisfactory to the Agent in the amount of the claims to be set aside to pay such Awards and bearing interest at prevailing commercial rates agreed between the Agent and such Somerset Group Member accruing to the benefit of such Somerset Group Member, within 30 days from the date such possession or process first takes effect and in any event at least five (5) Business Days before such Business Assets are capable of being disposed of thereunder.

15.1.10 *Insolvency.* Any Bankruptcy Event with respect to any Somerset Income Fund Group Member occurs; or any Somerset Income Fund Group Member takes corporate or other internal administrative, management or other governance action to authorize any Bankruptcy Proceeding.

15.1.11 *Cessation of Business.* Except for a Business Combination permitted by Subsection 14.2.6, any Somerset Group Member ceases or suspends or threatens to cease or suspend all or a substantial portion of its business.

15.1.12 *Security Imperilled.* If (a) any Litigation is commenced which, if determined adversely to any Somerset Income Fund Group Member or Credit Party or to the rights of the Senior Lenders contemplated under the Loan Documents, would constitute a Material Adverse Change, (b) any Loan Document or any material right thereunder becomes or is determined by a court of competent jurisdiction to be invalid, unenforceable or ineffective, (c) the Lien of any Security is determined by a court of competent jurisdiction to be or ceases to be valid and perfected ranking in priority in the manner contemplated herein or in the Security Documents, other than by reason of the direct act or omission of any Senior Lender or (d) any Somerset Income Fund Group Member or Credit Party denies that it has any or further obligations thereunder or challenges the validity of any provision thereof or of the Security.

15.1.13 *Material Adverse Change.* Any Material Adverse Change occurs.

15.1.14 *Change in Control.* Any Change in Control occurs without the consent of the Required Lenders.

15.1.15 *Change in Ownership.* Without the consent of the Required Lenders: any class of Capital Stock of the Borrower, other than the Class B Units, cease to be owned by Somerset GP or Somerset Trust; Somerset Trust or Somerset GP ceases to be a Wholly-Owned Subsidiary of the Fund; or any Subsidiary of the Borrower ceases to be a Wholly-Owned Subsidiary of the Borrower, except as otherwise expressly permitted by Subsection 14.2.6.

15.1.16 *Note Indenture.* Any default under the Note Indenture occurs, unless the Required Lenders are of the good faith opinion that such default is Immaterial.

15.1.17 *Somerset US Notes.* Any payment default under the Somerset US Notes occurs or any other default under the Somerset US Notes occurs which entitles the holder thereof to accelerate payment of amounts owing thereunder.

15.1.18 *Requirement to Pay, etc.* Any step is taken to issue any requirement to pay from the Minister of Finance of Canada or to issue any garnishment order directing any Senior Lender to pay more than 50% of the Threshold Amount on account of any Somerset Group Member to the Minister of Finance, the Receiver General or such garnishing creditor.

15.1.19 *Termination Event.* Any Termination Event occurs which the Required Lenders reasonably believe could subject the Borrower or any ERISA Affiliate to a liability in excess of the Threshold Amount.

## **15.2 Termination and Acceleration**

Upon the occurrence of an Event of Default, the Agent may (or, subject to Section 16.10, at the direction of the Required Lenders shall) do any one or more of the following:

- (a) declare the whole or any item or part of the Total Commitment or any unutilized portion of any Credit Facility to be cancelled, terminated or reduced, whereupon the Lenders (to the extent applicable) shall not be required to make any further Advance hereunder in respect of such portion of the Total Commitment or each Credit Facility cancelled, terminated or reduced;
- (b) accelerate the maturity of all or any item or part of the Loan Obligations of the Borrower hereunder and declare them to be payable on demand or immediately due and payable, whereupon they shall be so accelerated and become so due and payable;
- (c) suspend any rights of the Borrower under any Loan Document, whereupon such rights shall be so suspended;
- (d) demand payment under any Guarantee and any other guarantee comprised in the Security;

- (e) demand that the Borrower pay (i) the Credit Amount of all outstanding Acceptances in prepayment of (or at the option of each Lender, as cash collateral for) its obligations under Section 5.7 in respect of outstanding Acceptances and (iii) the maximum amounts remaining to be drawn upon under all outstanding Standby Instruments in prepayment of (or, at the option of the Issuing Bank, as cash collateral for) its obligations under Subsection 7.4.2 in respect thereof, whereupon the Borrower shall be obliged to (A) prepay immediately to the Agent for the account of the Lenders entitled thereto the Credit Amount of all outstanding Acceptances, and (B) pay immediately to the Agent for the account of the Issuing Bank such maximum amounts of such Standby Instruments until they expire or are drawn upon, whereupon the Issuing Bank shall account to the Borrower and remit any overpayment to the Agent for, subject to the other provisions of this Section 14.2, return to the Borrower;
- (f) enforce and realize upon, or direct the Collateral Agent to enforce and realize upon, all or any part of the Security; or
- (g) take any other action, commence and prosecute any Litigation or exercise such other rights as may be permitted by applicable law (whether or not provided for in any Loan Document) at such times and in such manner as the Agent may consider expedient,

all without any additional notice, demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour or any other action being required. If an Event of Default referred to in Subsection 15.1.10 or 15.1.18 occurs, unless the Required Lenders otherwise agree, the Total Commitment shall be immediately cancelled and permanently reduced to zero and the Loan Obligations shall be accelerated and become immediately due and payable automatically without any action on the part of any Senior Lender being required.

### **15.3 Waiver**

The Required Lenders may waive any Default. No waiver, however, shall be deemed to extend to a subsequent Default, whether or not the same as or similar to the Default waived, and no act or omission by the Senior Lenders shall extend to, or be taken in any manner whatsoever to affect, any subsequent Default or the rights of the Senior Lenders arising therefrom. Any such waiver must be in writing and signed by the Agent to be effective. No failure on the part of the Senior Lenders to exercise, and no delay by the Senior Lenders in exercising, any rights under any Loan Document shall operate as a waiver of such rights. No single or partial exercise of any such rights shall preclude any other or further exercise of such rights or the exercise of any other rights.

## **ARTICLE 16 THE AGENT AND THE ADMINISTRATION OF THE CREDIT FACILITIES**

### **16.1 Appointment and Authorization**

Each Lender irrevocably appoints and authorizes the Agent to execute, deliver and take such actions as its agent under each Loan Document to which the Agent is party and to

exercise such rights under each such Loan Document as are specifically delegated to the Agent by the terms thereof, together with such rights as are reasonably incidental thereto. The Agent accepts such appointment and agrees to perform its obligations as such Agent under each such Loan Document in accordance with the provisions thereof and hereof.

## **16.2 Declaration of Agency**

The Agent declares that it shall hold the Security entrusted to it, the Collateral charged thereby and the rights granted to it under each other Loan Document, for its own benefit and as agent for the rateable benefit of each Lender. The rights vested in the Agent by any Loan Document shall be performed by the Agent in accordance with this Article 16.

## **16.3 Quebec Provisions**

16.3.1 *Power of Attorney.* Without limiting the powers of the Agent hereunder or under any other Loan Document to the extent applicable, each of the Lenders hereby acknowledges that the Agent (or a collateral agent designated by the Agent) shall, for the purposes of holding any security granted by any Somerset Group Member on the property of that Somerset Group Member pursuant to the laws of the Province of Quebec, be the holder of an irrevocable power of attorney (*fondé de pouvoir*) (within the meaning of Article 2692 of the *Civil Code of Quebec*) for all present and future Lenders and in particular for all present and future holders of any bond issued by that Somerset Group Member to the Agent and secured by a hypothec granted by that Somerset Group Member pursuant to the laws of the Province of Quebec. Each of the Lenders hereby irrevocably constitutes, to the extent necessary, the Agent (or such designated collateral agent) as the holder of such irrevocable power of attorney (*fondé de pouvoir*) (within the meaning of Article 2692 of the *Civil Code of Quebec*) in order to hold security granted by that Somerset Group Member in the Province of Quebec. Each Transferee shall be deemed to have confirmed and ratified the constitution of the Agent as the holder of such irrevocable power of attorney (*fondé de pouvoir*) by execution of a Loan Transfer Agreement. Notwithstanding the provisions of Section 32 of *An Act respecting the Special Powers of Legal Persons* (Quebec), the Borrower and the Lenders irrevocably agree (and the Borrower shall cause each other Secured Somerset Group Member with Business Assets situated in the Province of Quebec to irrevocably agree) that the Agent may acquire and be the holder of any bond issued by any Somerset Group Member and secured by a hypothec granted by that Somerset Group Member pursuant to the laws of the Province of Quebec at any time and from time to time. The Borrower hereby acknowledges (and the Borrower shall cause each other Secured Somerset Group Member with Business Assets situated in the Province of Quebec to acknowledge) that any such bond constitutes a title of indebtedness, as such term is used in Article 2692 of the *Civil Code of Quebec*.

16.3.2 *Quebec Bond Pledge.* The Borrower does hereby expressly acknowledge, declare, agree and confirm (and the Borrower shall cause each other Secured Somerset Group Member with Business Assets situated in the Province of Quebec to expressly acknowledge, declare, agree and confirm) that any Transferee, through the Agent, shall have all the benefits of and is hereby acknowledged for all purposes of the Secured Documents as being a payee under any bond issued by the Borrower (or such Secured Somerset Group Member) to the Agent and secured by a hypothec granted by the Borrower (or such Secured Somerset Group Member) pursuant to the laws of the Province of Québec, jointly with the other Lenders, in the same

manner and to the same extent as though such Transferee were an original named payee thereunder and pursuant to any pledge of such bond in favour of the Agent, the Agent shall hold such bond in pledge for the benefit of such Transferee, jointly with the other Lenders.

16.3.3 *Quebec Law Governing.* This Section 16.3 shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Quebec.

#### **16.4 Protection of Agent**

The Agent shall not be liable for any action taken or omitted to be taken by it under any Loan Document or in connection therewith, except to the extent of any losses and expenses that are determined by a Final Judgment to have directly resulted from the gross negligence or willful misconduct of the Agent. In no event shall the Agent be liable to any Credit Party or Lender for special, indirect, consequential or punitive damages (including loss of profit, business or anticipated savings) arising out of or in connection with, or as a result of any Secured Document or the performance, improper performance or non-performance of any obligation thereunder.

#### **16.5 Interest Holders**

The Agent may treat each Lender as the holder of all of the rights of such Lender in respect of the Credit Facilities until a duly executed and delivered Loan Transfer Agreement signed by such Lender and the Transferee, completed in form and substance satisfactory to the Agent, has been delivered to the Agent and the Agent has been paid its required processing fee for such loan transfer. The Agent may treat each Lender as the holder of all rights of such Lender under all Cash Management Agreements and Treasury Agreements entered into by it until a duly executed and delivered assignment and assumption agreement signed by the Borrower, such Lender and the proposed assignee, in form and substance satisfactory to the Agent has been delivered to the Agent and the Agent has been paid such processing fee for such assignment as the Agent shall reasonably require, together with payment of all fees, costs and expenses of the Lenders' Counsel incurred or anticipated being incurred in completing such assignment.

#### **16.6 Consultation with Professionals**

The Agent may engage and consult with the Lenders' Counsel, accountants, consultants, financial advisors and other experts and the Agent shall not be liable for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of the Lenders' Counsel or such accountants, consultants, financial advisors or other experts.

#### **16.7 Documents**

The Agent shall not be under any duty or obligation to examine, enquire into or pass upon the validity, effectiveness or genuineness of any Secured Document or any other agreement, document, instrument or communication furnished pursuant to or in connection with any Secured Document, and the Agent shall be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

## **16.8 The Agent and its Subsidiaries and Affiliates**

With respect to its Commitments, those portions of the Credit Facilities made available by it and each Cash Management Agreement and Treasury Agreement entered into by it, the Agent shall have the same rights hereunder as any other Lender and may exercise the same as though it were not the Agent and the Agent and its Subsidiaries and Affiliates may accept deposits from, lend money to and generally engage in any kind of business with any Somerset Group Member and its Affiliates and Persons doing business with any Somerset Group Member or any of its Affiliates as if it were not the Agent and without any obligation to account therefor.

**16.9 Responsibility of the Agent.** The obligations of the Agent to the Lenders under each Loan Document to which the Agent is party are only those expressly set forth in such Loan Documents, subject as otherwise provided in this Article 16. The Agent shall not have any fiduciary obligation to any Lender. The Agent shall only have those contractual obligations expressly set forth in each Loan Document to which the Agent is party. The Agent shall not have any duty or obligation to investigate whether any Default has occurred. The Agent shall be entitled to assume that no Default has occurred and is continuing, unless any officer of the Agent charged with the administration of the Loan Documents has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Lender that such Lender considers that a Default has occurred and is continuing, such notification to specify in detail the nature thereof.

## **16.10 Action by the Agent**

**16.10.1 Exercise of Discretion.** The Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, and with respect to taking or refraining from taking any action which it may be able to take under or in respect of, any Loan Document, unless the Agent has been instructed by the Required Lenders to exercise such rights or to take or refrain from taking such action; provided, however, that the Agent shall not release or postpone any Guarantee or release, discharge or subordinate any Lien created under any Security without the consent of all the Lenders, except to the extent expressly permitted to do so under Subsection 16.19.2(h). The Agent shall not incur any obligations under or in respect of any Loan Document with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except to the extent of any losses and expenses that are determined by a Final Judgment to have directly resulted from the gross negligence or willful misconduct of the Agent.

**16.10.2 Instruments from Required Lenders.** The Agent shall in all cases be fully protected in acting or refraining from acting under any Loan Document in accordance with the instructions of the Required Lenders, and any action taken or refrained from being taken pursuant to such instructions shall be binding on all Lenders.

**16.10.3 Compliance with Applicable Law.** Notwithstanding anything else herein contained, the Agent may refrain from doing anything which would or might in its opinion be contrary to any Applicable Law or which would or might otherwise render it liable to any Person and may do anything which is, in its opinion, necessary to comply with any Applicable Law.

16.10.4 *Insurance.* Without prejudice to the provisions of any other Loan Document, the Agent shall have the right, but not the obligation, to insure any of the Collateral or to require any other Person to maintain any such insurance and it shall not be responsible for any losses and expenses which may be suffered by any Person as a result of the lack of or inadequacy or insufficiency of any such insurance.

16.10.5 *Litigation.* The Agent shall have the right to institute, prosecute and defend any Litigation affecting the Agent, any rights of the Senior Lenders under the Loan Documents, the Collateral or the Security and, subject to Section 16.19, to compromise any matter or difference or submit any such matter or difference to arbitration and to compromise or compound any debts owing to the Agent as agent or any other claims against it as such agent upon being provided with such evidence as shall seem sufficient to the Agent.

16.10.6 *New Obligations.* The Agent shall have the right to give or enter into any obligation as it shall, with the approval of the Required Lenders and subject to all of the provisions of the Loan Documents to which the Agent is party, think fit in relation to the Secured Documents, the Collateral or the Security.

16.10.7 *Agent May Require Security.* Notwithstanding Subsection 16.10.1, the Agent may refrain from acting in accordance with any instructions of the Required Lenders to begin any Litigation, enforce any Security or to take management or control of any Collateral arising out of or in connection with any Loan Document until it has received such security as it may require (whether by way of payment in advance or otherwise) for all losses and expenses and disbursements which it anticipates it will or may expend or incur in complying with such instructions.

16.10.8 *Standard of Promptness.* Where the Agent is obliged by the provisions of this Article 16 to give any notice or notification “promptly” or “forthwith”, if it gives such notice or notification within two (2) Business Days of an officer of it charged with the administration of this Agreement becoming aware of the subject matter of such notice or notification, it shall be deemed to have given such notice or notification promptly or forthwith.

## **16.11 Notice of Events of Default**

In the event that an officer of the Agent charged with the administration of this Agreement is notified of any Event of Default, the Agent shall promptly notify the Lenders, and, subject to Section 16.10, the Agent shall take such action and assert such rights under the Loan Documents as the Required Lenders shall request in writing, and the Agent shall not be subject to any liability by reason of its acting pursuant to any such request. Prior to receiving any instructions from the Required Lenders in respect of such Event of Default, the Agent may, but shall not be obliged to, take such action or assert such rights (other than those matters requiring unanimous Lender consent under any other provision of this Agreement) as it deems in its discretion to be advisable for the protection of the Senior Lenders, except that, if the Required Lenders have instructed the Agent not to take such action or assert such rights, the Agent shall not, except as otherwise provided in Subsections 16.10.3 and 16.10.7, act contrary to those instructions.

## **16.12 Responsibility Disclaimed**

The Agent in such capacity shall not be under any obligation whatsoever:

- (a) to any Credit Party as a consequence of any failure or delay in the performance by, or any breach by, any Lender of any of its obligations under any Secured Document;
- (b) to any Lender, as a consequence of any failure or delay in performance by, or any breach by, any Credit Party of any of its obligations under any Secured Document; or
- (c) to any Lender for any statements, representations or warranties in any Secured Document or any other agreement, document or instrument contemplated by any Secured Document or in any other information provided pursuant to any Secured Document or any other agreement, document or instrument contemplated by any Secured Document or for the validity, effectiveness, enforceability or sufficiency of any Secured Document or any other agreement, document or instrument contemplated thereby.

## **16.13 Indemnification**

16.13.1 *Lenders to Indemnify Agent.* Each of the Lenders severally agrees to indemnify the Agent (to the extent not paid by any Somerset Group Member to the Agent on demand) *pro rata* according to their respective Total Exposures from and against any and all losses and 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 any Secured Document or any other agreement, document or instrument contemplated thereby or any action taken or omitted by the Agent under any Secured Document or any agreement, document or instrument contemplated thereby, except that no Lender shall be liable to the Agent for any portion of such losses and expenses or disbursements to the extent they are determined by a Final Judgment to have directly resulted from the gross negligence or willful misconduct of the Agent. Payment by the Lenders to the Agent pursuant to this Subsection 16.13.1 shall not discharge or satisfy any obligation of any Somerset Group Member to make such payment to the Agent, but rather the Lenders making such payment shall be subrogated to the rights of the Agent against such Somerset Group Member in respect thereof.

16.13.2 *Agent May Indemnify Itself.* The Agent may indemnify itself out of the Collateral charged by the Security, or any funds received by the Agent pursuant to Section 16.21, against all of the losses and expenses or disbursements suffered or incurred by the Agent in connection with any matter or thing done or omitted to be done in any way relating to any Secured Document, except for any portion of such losses and expenses or disbursements to the extent they are determined by a Final Judgment to have directly resulted from the gross negligence or willful misconduct of the Agent.

#### **16.14 Protection of Representatives**

Each reference in Sections 16.1, 16.3, 16.10, 16.11, 16.12, 16.13, 16.16 and 16.21 to the Agent shall (to the extent the context so admits) be deemed to include the Agent and its Representatives and the Agent shall be constituted as agent and bare trustee of each such Representative and shall hold and enforce their rights under those Sections for their respective benefits.

#### **16.15 Credit Decision**

Each Lender represents and warrants to the Agent that:

- (a) in making its decision to enter into each Secured Document to which it is party and to make its Commitments and its portion of the Credit Facilities available to the Borrower, it has independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of each Somerset Group Member and that it has made an independent credit judgment without reliance upon any information furnished by the Agent; and
- (b) so long as any portion of the Credit Facilities is being utilized by the Borrower or any Secured Obligation remains unperformed, it will continue to make its own independent evaluation of the financial condition and affairs of each Somerset Group Member.

#### **16.16 Replacement of Agent, Reference Lender and Swing Line Lender**

16.16.1 *Agents.* The Agent (a “**Resigning Agent**”) may resign at any time by giving written notice thereof to the Lenders and the Borrower. Such resignation will not be effective until a replacement agent is appointed. Upon receipt of notice of any such intended resignation, the Required Lenders shall have the right to appoint a replacement to the Resigning Agent who shall be one of the Lenders. Unless an Event of Default has occurred, the consent of the Borrower (which shall not be unreasonably withheld or delayed) to any such replacement shall also be required. If no replacement to the Resigning Agent shall have been so appointed and shall have accepted such appointment within 15 days of receipt of such notice, the Lenders (excluding the Lender that is the Resigning Agent) shall within the following 15 days appoint a replacement who may, but need not be, a Lender. If the Lenders fail to appoint a replacement to the Resigning Agent within such 15 day period, without limitation of its rights under this Subsection 16.16.1, the Resigning Agent may, on behalf of the Senior Lenders, appoint a replacement Agent which shall be a financial institution listed in Schedule I, II or III of the *Bank Act* (Canada) or be organized under the laws of Canada (or a Province) or the laws of the United States or any State thereof, in each case which has (or whose Holding Body Corporate has) combined capital and reserves in excess of CAD5,000,000,000 (or the Equivalent Amount in foreign currency) and has (or whose Affiliates have) offices in Toronto. Upon the resignation of a Resigning Agent, the replacement agent shall thereupon succeed to and become vested with all the rights and obligations of the Resigning Agent and the Resigning Agent shall be discharged from its obligations as administration agent under the Loan Documents. A replacement agent shall evidence its acceptance of appointment hereunder by signing and delivering a counterpart of this Agreement to the Borrower and the Resigning Agent. After any Resigning Agent’s

resignation or removal hereunder as Agent the provisions of this Article 16 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

16.16.2 *Reference Lender.* The Agent may remove the Reference Lender and nominate and appoint any other Lender (or its affiliate) to act as the Reference Lender in relation to any Credit Facility under this Agreement. Any Reference Lender may resign at any time by giving notice thereof to the Agent. Upon receipt of such resignation notice, the Agent shall appoint a replacement Reference Lender who shall be one of the Lenders (or their Affiliates). Unless an Event of Default has occurred, the Borrower's consent (which shall not be unreasonably withheld) shall be required to any replacement Reference Lender.

16.16.3 *Swing Line Lender.* The Swing Line Lender may be replaced by a Transferee pursuant to and in accordance with the provisions of Subsection 17.10.4.

## **16.17 Delegation**

With the prior approval of the Required Lenders, such approval not to be unreasonably withheld or delayed, the Agent shall have the right to delegate any of its rights or obligations under the Loan Documents to any other Person upon such terms and conditions as the Agent may think fit and the Agent shall not be bound to supervise the proceedings or be in any way responsible for any obligations or losses and expenses incurred by reason of any misconduct or default on the part of any such delegate.

## **16.18 Required Lender Decisions**

Where the Required Lenders are required to agree or consent to any act or thing, or to exercise any judgment or discretion, under any Loan Document, the Agent shall ask all Lenders for such agreement or consent to do any such act or thing or to exercise such judgment or discretion. The foregoing shall not limit the right of the Required Lenders to agree or consent to any such act or thing or to exercise such judgment or discretion. A copy of such agreement or consent shall be sent by the Agent to all the Lenders.

## **16.19 Changes, Judgments and Discretions**

16.19.1 *General.* The rights of each Senior Lender under each Secured Document shall be cumulative and not exclusive of any rights which each Senior Lender would otherwise have, and no failure or delay by the Agent or any Lender in exercising any right shall operate as a waiver of it nor shall any single or partial exercise of any right preclude its further exercise or the exercise of any other right. Subject as otherwise provided in Subsections 16.19.2 and 16.19.3, (a) any term, condition, other provision, obligation or agreement contained in any Loan Document may be changed with the consent of the Borrower and the Majority Lenders, (b) any act or thing referred to in any Loan Document may be agreed or consented to by the Majority Lenders and (c) the exercise of any judgment or discretion by the Lenders contained in any Loan Document may be exercised by the Majority Lenders.

16.19.2 *Changes Requiring Every Lender's Consent.* Without the prior consent of every Lender, no change to any Loan Document, agreement or consent to any act or thing referred to in

any Loan Document or exercise of any judgment or discretion contained in any Loan Document shall:

- (a) increase the aggregate amount of any Credit Facility, the amount or term of any of the Commitments or the proportion represented by the Rateable Share of any Lender, except to the extent expressly permitted or required in this Agreement;
- (b) postpone or defer the time for the payment of the principal of or interest on any Advance, any Fees or any other amount payable hereunder;
- (c) decrease the rate or amount or change the currency of any principal, interest or Fees payable hereunder or the requirement of *pro rata* application in accordance with (i) each Lender's Rateable Share of all amounts received by the Agent in respect of the Revolving Facility or Term Facility or (ii) its Total Exposure of all amounts received by the Senior Lenders after the occurrence of an Enforcement Event;
- (d) require any Lender to make any Advance or its share in any Advance available to finance a Hostile Take-Over Bid if that Lender determines that it has a conflict of interest;
- (e) change the definition of "Majority Lenders", "Rateable Share", "Required Lenders" or "Total Exposure";
- (f) change the purpose for which Advances are to be used as contemplated by Sections 2.1, 3.1 and 4.1;
- (g) change Section 16.23, 16.26 or 17.10.2 or this Section 16.19; or
- (h) release or postpone any Guarantee or release, discharge or subordinate any Lien created under the Security, except that the Agent may release and discharge (i) each Guarantee and the Security upon Payment in Full of all Secured Obligations owing to all Senior Lenders, (ii) the Guarantee of any Subsidiary whose Capital Stock is or any Business Assets which are disposed of in accordance with Subsection 14.2.3 and any Lien created under the Security over such Subsidiary's Business Assets and (iii) or to permit a Business Combination to take place in accordance with Subsection 14.2.6.

16.19.3 *Changes Requiring Consent of the Agent and Swing Line Lender.* No change to any provision of any Loan Document shall affect any of the rights or obligations of the Agent or the Swing Line Lender under any Loan Document, without the consent of the Agent or the Swing Line Lender, as the case may be.

## **16.20 Determination by Agent**

16.20.1 *Good Faith.* Any determination to be made by the Agent under any Loan Document shall be made by the Agent in good faith and, if so made, shall be deemed to have been properly made and conclusive and binding on all parties, absent manifest error.

16.20.2 *Certificate of the Agent as to Rates.* Except as otherwise provided in Subsection 16.21.5, a certificate of the Agent certifying any amount or interest or discount rate shall be conclusive and binding on the parties hereto for all purposes, absent manifest error. No provision hereof shall be construed so as to require the Agent to issue a certificate at any particular time.

16.20.3 *Notification of Rates.* The Reference Lender (if it is not the same Person as the Agent) shall (or shall cause its Affiliate that is the Reference Lender, as the case may be, to) promptly notify the Agent of each interest rate that is required to determine pursuant to this Agreement. Promptly following receipt of each such notice, or promptly after determination if the Agent and the Reference Lender is the same Person, the Agent shall promptly notify the Lenders of each interest rate the Agent is required to determine and report to the Lenders pursuant to this Agreement.

## **16.21 Interlender Procedure for Making Advances**

16.21.1 *Lenders to provide their Rateable Shares to Agent.* Subject to the terms and conditions of this Agreement, each of the Revolving Facility and the Term Facility shall be available to the Borrower in accordance with this Section 16.21. Upon receipt by the Agent of a Borrowing Request, the Agent will promptly notify each Lender of the receipt of such Borrowing Request and of such Lender's Rateable Share of such Borrowing. In the case of an issue of Acceptances, the Agent will round allocations amongst the Lenders to ensure that each Acceptance issued has a face amount which is a whole number multiple of CAD100,000 (and such rounded allocations shall constitute the Lenders' respective Rateable Shares for the purposes of this Agreement). Subject to Sections 6.3 and 9.9, Article 11 and Subsection 16.21.7, each Lender will make its Rateable Share of each Borrowing under the Revolving Facility or the Term Facility, as applicable, or its Net Acceptance Proceeds available to the Agent by paying, no later than 11:00 a.m. (local time in the place of payment) on the Borrowing Date requested by the Borrower, its Rateable Share of such Advance or such Net Acceptance Proceeds to the Agent's Accounts. Subject to Section 9.9 and Article 11, the Agent will make such funds available, upon receipt, to the Borrower on the Borrowing Date by bank transfer to the Borrower's Accounts.

16.21.2 *Limitation on Agent's Liability.* The obligations of the Agent under this Section 16.21 shall be limited to taking such steps as are commercially reasonable to implement the instructions described in Subsection 16.21.1, and the Agent shall not be liable for any losses and expenses which may be incurred or suffered by the Borrower and occasioned by the failure or delay of funds to reach the designated destination.

16.21.3 *Lenders to indemnify Agent for failure to make funds available.* Unless the Agent has been notified by a Lender at least two (2) Business Days prior to the Borrowing Date requested by the Borrower that such Lender will not make available to the Agent its Rateable Share of such Borrowing or its Net Acceptance Proceeds, the Agent may assume that such Lender has made such portion of the Borrowing or such Net Acceptance Proceeds available to the Agent on the Borrowing Date in accordance with the provisions hereof, and the Agent may, in reliance upon such assumption, make available (to the extent applicable) to the Borrower on such date a corresponding amount. If the Agent has made such assumption, to the extent a Lender has not so made its Rateable Share of the Borrowing or its Net Acceptance Proceeds

available to the Agent, such Lender agrees to pay to the Agent forthwith on demand, to the extent that such amount is not recovered from the Borrower within seven (7) days of demand (without in any way obligating the Agent to commence any Litigation to recover such amount), such Lender's Rateable Share of the Borrowing or its Net Acceptance Proceeds and all losses and expenses incurred by the Agent in connection therewith together with interest thereon at the prevailing rate applicable to interbank deposit balances plus two (2) percent (2%) per annum for each day from the date such amount is made available by the Agent until the date such amount is paid or repaid to the Agent.

16.21.4 *Borrower to repay any Advance not funded by a Lender.* Notwithstanding Subsection 16.21.3, if a Lender fails to pay any portion of any Borrowing or its Net Acceptance Proceeds to the Agent pursuant to Subsection 16.21.3, the Borrower shall, without prejudice to any rights that the Borrower might have against such Lender, repay such amount to the Agent within three (3) Business Days after demand therefor by the Agent together with all losses and expenses incurred by the Agent in connection therewith and interest thereon at the rate payable hereunder by the Borrower in respect of such Borrowing.

16.21.5 *Agent to issue Certificate as to Amount payable.* Any amount payable to the Agent pursuant to this Section 16.21 (other than Subsection 16.21.1) shall be set forth in a certificate delivered by the Agent to the Lender concerned and the Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall be *prima facie* evidence thereof. If a Lender makes the payment to the Agent required by this Section 16.21, the amount so paid shall constitute, to the extent thereof, such Lender's Rateable Share of the Borrowing or its Net Acceptance Proceeds for the purposes of this Agreement.

16.21.6 *No Lender responsible for any other Lender's Rateable Share.* The failure of any Lender to advance its Rateable Share of any Borrowing or its Net Acceptance Proceeds to the Agent pursuant to this Agreement shall not relieve any other Lender of its obligations, if any, hereunder to advance its Rateable Share of the Borrowing or its Net Acceptance Proceeds to the Agent pursuant to this Agreement on the Borrowing Date, but no Lender shall be responsible for the failure of any other Lender to make available its Rateable Share of any Borrowing or its Net Acceptance Proceeds to be made available by such other Lender to the Agent pursuant to this Agreement on any Borrowing Date.

16.21.7 *InterLender Netting.* If on any date payments of the principal or face amounts of Advances would be due and payable under the same Credit Facility under this Agreement in the same currency by the Agent to any Lender and by that Lender to the Agent, then, on such date, unless the Agent notifies the Lenders stating that netting is not to apply to such payments, each such party's obligations to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by the Agent (after receipt from the Borrower or the Lenders, as the case may be) to that Lender exceeds the aggregate amount that would otherwise have been payable by that Lender to the Agent (for the account of the Borrower or the Lenders, as the case may be) or *vice versa*, such obligation shall be replaced by an obligation upon whichever of the Agent or the Lender would have had to pay the larger aggregate amount to pay to the other the excess of the larger aggregate amount over the smaller aggregate amount.

## 16.22 Remittance of Payments

Forthwith after receipt of any payment of principal, interest, Fees or other amounts for the benefit of the Lenders pursuant to the provisions hereof, the Agent shall remit to each Lender entitled thereto its Rateable Share of such payment. If the Agent, on the assumption that it will receive, on any particular date, a payment of principal, interest, Fees or other amounts hereunder, remits to each Lender its Rateable Share of such payment and the Borrower fails to make such payment, each Lender agrees to repay to the Agent forthwith on demand, to the extent that such amount is not recovered from the Borrower within seven (7) days of demand (without in any way obligating the Agent to commence any Litigation to recover such amount) such Lender's Rateable Share of the payment made pursuant hereto, together with all losses and expenses incurred by the Agent in connection therewith and interest thereon (at the prevailing rate applicable to interbank deposit balances) for each day from the date such amount is remitted to the Lenders. The exact amount of the repayment required to be made by the Lenders will be set forth in a statement delivered by the Agent to each Lender, which statement shall be conclusive and binding for all purposes, absent manifest error.

## 16.23 Redistribution of Payments

16.23.1 *Disproportionate Receipts of Loan Obligations to be Shared.* Except for any payment that is required to be shared pursuant to Subsection 16.23.2, if a Lender, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment made to it from the Agent in accordance with the provisions hereof) receives payment of a portion of the Loan Obligations due to it which is greater than the proportion received by any other Lender in respect of the aggregate amount of the Loan Obligations due to such other Lender (having regard to the respective Rateable Shares of the Lenders immediately before such payment is received), the Lender receiving such proportionately greater payment shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Loan Obligations due to the other Lender or Lenders (the "**Selling Lender or Lenders**") so that the respective receipts shall be *pro rata* according to their respective Rateable Shares; provided, however, that:

- (a) if all or part of such proportionately greater payment received by such purchasing Lender shall be recovered from a Somerset Group Member by the Selling Lender or Lenders, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Lenders to the extent of such recovery, together with interest thereon at the prevailing rate applicable to interbank deposit balances calculated and payable from the Business Day following the day such return is requested until it is paid in full; and
- (b) if all or part of such proportionately greater payment received by such purchasing Lender is found to have been a transfer in fraud of creditors or a preferential payment under any applicable bankruptcy or insolvency legislation or is otherwise required to be returned by such purchasing Lender, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Lenders to the extent of such amount returned, together with interest thereon at the prevailing rate applicable to interbank deposit balances

calculated and payable from the Business Day following the day such return is requested until it is paid in full.

16.23.2 *Disproportionate Receipts after an Enforcement Event.* If a Lender, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment to it from the Agent in accordance with the provisions hereof), receives payment of a portion of the Secured Obligations due to it at the time an Enforcement Event occurs or any time thereafter which is greater than the proportion received by any other Lender in respect of the aggregate amount of the Secured Obligations due to such other Lender (having regard to the respective Total Exposures of the Lenders immediately before such payment is received), the Lenders receiving such proportionately greater payment shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Secured Obligations due to the other Lender or Lenders (the “**Selling Lender or Lenders**”) so that the respective receipts shall be *pro rata* according to their respective Total Exposures determined before such payment is received; provided, however, that:

- (a) if all or part of such proportionately greater payment received by such purchasing Lender shall be recovered from a Somerset Group Member by the Selling Lender or Lenders, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Lenders to the extent of such recovery, together with interest thereon at the relevant interbank rate calculated and payable from the Business Day following the day such return is requested until it is paid in full; and
- (b) if all or part of such proportionately greater payment received by such purchasing Lender is found to have been a transfer in fraud of creditors or a preferential payment under any applicable bankruptcy and insolvency legislation or is otherwise required to be returned by such purchasing Lender, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Lenders to the extent of such amount returned, together with interest thereon at the prevailing rate applicable to interbank deposit balances calculated and payable from the Business Day following the day such return is requested until it is paid in full.

16.23.3 *Notice Requirement.* If any Lender receives or recovers payment of any amount it is required to share pursuant to Subsections 16.23.1 or 16.23.2, it shall promptly provide full particulars thereof to the Agent and the Agent shall promptly provide copies of such particulars to the other Lenders.

## **16.24 Prompt Notice to Lenders**

16.24.1 *Distribution of Information.* The Agent agrees to provide to the Lenders copies of the information, notices and reports received by it from the Borrower for distribution to the Lenders pursuant to this Agreement, including information provided pursuant to Subsection 14.1.6, promptly upon receipt of same.

16.24.2 *Distribution by Use of Websites.* The Agent may satisfy its obligations under this Agreement to deliver to the Lenders copies of the information, notices and reports referred to in

Subsection 16.24.1 by posting this information onto an electronic website designated by the Agent to which the Lenders have access. The Agent shall supply the Lenders with the address of and any relevant password specifications for that designated website.

**16.25 Several Debts of the Lenders**

Each Lender's share in each Borrowing constitutes a several debt owing by the Borrower to such Lender.

**16.26 Enforcement of Security**

To the extent that the Agent receives or recovers payment of an amount owing under the Secured Documents upon or following the occurrence of an Enforcement Event, such amount shall be applied as amongst the Senior Lenders:

- (a) first, in or towards payment of all of the Agent's losses and expenses and disbursements;
- (b) secondly, in or towards payment of all Secured Obligations which are due and payable by the Borrower at such time to the Lenders on account of the Secured Obligations owing by the Borrower *pro rata* to the Total Exposures of the Lenders;
- (c) thirdly, if the Secured Obligations have been paid in full, in payment to any Person to whom the Agent is obliged to pay in priority to the Somerset Group Member otherwise entitled thereto, to the extent it is so obliged; and
- (d) fourthly, thereafter, in payment to the Somerset Group Member entitled thereto.

The fact that the Agent may make a payment pursuant to paragraph (c) or (d) above or may determine that the Secured Obligations have been paid in full, will not thereafter prevent the Agent from applying any further monies, or any credit balance on any account, in the order set out in this Section 16.26.

**16.27 No Reliance on Agent's Customer Identification Program**

Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, Participants or Transferees, may rely on the Agent to carry out such Lender's, Affiliate's, Participant's or Transferee's customer identification program, or other obligations required or imposed under or pursuant to the USA Patriot Act, or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any of the Somerset Income Fund Group, their Affiliates or their Representatives, the Loan Documents or the transactions hereunder or contemplated hereby: (a) any identity verification procedures, (b) any recordkeeping, (c) comparisons with government lists, (d) customer notices or (e) other procedures required under the USA Patriot Act or such other laws.

## **16.28 USA Patriot Act**

Each Lender and each of its Participants and Transferees that are not incorporated under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the USA Patriot Act because it is both (a) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (b) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Agent the certification, or, if applicable, recertification, certifying that such Lender is not a “shell” and certifying to other matters as required by Section 313 of the USA Patriot Act: (1) within ten (10) days of request by the Agent and (2) at such other times as are required under the USA Patriot Act.

## **16.29 Know Your Customer Checks**

16.29.1 *Provide Information.* If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of a Credit Party or the composition of the shareholders of a Credit Party after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall ensure that each Credit Party shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (c) above, any prospective new Lender to carry out and be satisfied with the results of all necessary “know your customer” or other checks in relation to any relevant person pursuant to the transactions contemplated in the Loan Documents.

16.29.2 *Lender Information.* Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of all necessary “know your customer” or other checks on Lenders or prospective new Lenders pursuant to the transactions contemplated in the Loan Documents.

16.29.3 *Agent not Responsible.* Nothing in this Agreement shall oblige the Agent to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is

required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

### **16.30 Transitional Provisions**

As at the Effective Date, there is only one Lender. As a result, notwithstanding all other provisions to the contrary contained in this Agreement, until there is more than one Lender, (i) all notices, information and other communications to be provided by the Borrower to the Agent hereunder shall instead be provided directly to the sole Lender, (ii) all notices, information and other communications to be provided by a Lender to the Agent shall instead be provided to the Borrower, (iii) all payments to be made by the Borrower to the Agent for the account of the Lenders shall instead be made directly by the Borrower to the sole Lender, (iv) all payments to be made by the Agent on behalf of the Lenders to the Borrower shall instead be made directly by the sole Lender to the Borrower, (v) each determination to be made by the Agent under this Agreement shall be made by the sole Lender, and (vi) the sole Lender's own accounts shall govern the statement of account between that Lender and the Borrower relative to this Agreement. The Agent shall not be obliged to enter into any Loan Transfer Agreement until the Borrower has entered into an agreement with the Agent in form and substance satisfactory to the Agent providing for the payment of certain agency fees to the Agent. The Borrower agrees upon request of the Lender to enter into good faith negotiations with the Agent with a view to concluding such an agency fee agreement.

## **ARTICLE 17 GENERAL**

### **17.1 Costs and Expenses**

17.1.1 *Generally.* The Borrower shall on demand pay to the Agent, and indemnify and save harmless the Agent on a full indemnity basis from and against, the amount of all reasonable out-of-pocket fees, costs and expenses incurred and disbursements made by the Agent (including the reasonable fees and out-of-pocket expenses of the Lenders' Counsel (limited to one legal firm for each relevant jurisdiction) and those of accountants, experts, consultants and other Representatives retained by the Agent) in connection with each of:

- (a) the preparation, negotiation, settlement, execution, delivery, entry into effect and administration of each Loan Document and/or the satisfaction of any conditions or obligations specified in Article 11 or in the Post-Closing Undertaking;
- (b) the creation, validity, effect, perfection or priority of any Security;
- (c) the syndication of the Credit Facilities and post closing costs;
- (d) each change to each Loan Document;
- (e) any restructuring of the Credit Facilities for any reason other than by reason of an Event of Default; and
- (f) the interpretation, defence, establishment, preservation, protection or enforcement of rights of the Senior Lenders under each Loan Document.

17.1.2 *Post Default.* The Borrower shall on demand pay to each Senior Lender, and indemnify and save harmless each Senior Lender on a full indemnity basis from and against, the amount of all out-of-pocket fees, costs and expenses incurred and disbursements made by each Senior Lender (including the fees and out-of-pocket expenses of the Lenders' Counsel and those of legal counsel, accountants, experts and consultants retained by each Senior Lender) in connection with each of:

- (a) any restructuring of the Loan Obligations by reason of an Event of Default; and
- (b) the defence, establishment, preservation, protection or enforcement of rights of the Senior Lenders under each Loan Document after the occurrence of an Event of Default.

## 17.2 Indemnification by the Borrower

17.2.1 *Borrowings.* The Borrower shall on demand pay to the Agent for the account of each Lender, and indemnify and save harmless each Lender on a full indemnity basis from and against, the amount of all losses and expenses, including losses and expenses sustained by such Lender in connection with the liquidation or redeployment, in whole or in part, of deposits or funds borrowed or acquired by such Lender to fund such Lender's Rateable Share in any Borrowing, which such Lender sustains or incurs:

- (a) if for any reason a Borrowing does not occur on a date requested by the Borrower, unless the Borrowing does not occur by reason of the breach by the Agent or such Lender of its obligations under this Agreement;
- (b) if the Borrower fails to give any notice required to be given by it hereunder in the manner and at the time specified herein;
- (c) as a consequence of any failure by the Borrower to repay any amount when required by the terms of this Agreement; or
- (d) if the whole or any part of such Lender's Rateable Share in any Libor Loan made available to the Borrower is paid to such Lender or converted to another Type of Advance other than on the Period End Date relating thereto.

17.2.2 *Other.* The Borrower shall forthwith on demand, defend, indemnify and save harmless each of the Senior Lenders and their respective Representatives (each, an "**Indemnified Party**") on a full indemnity basis from and against any and all losses and expenses (including interest and, to the extent permitted by applicable law, penalties, fines and monetary sanctions) which an Indemnified Party suffers or incurs as a result of or otherwise in respect of:

- (a) any claim or liability of any kind relating to the Environment which arises out of the performance of, or the enforcement or exercise of any right under, any Loan Document, including any claim in nuisance, negligence, strict liability or other cause of action arising out of a discharge of a Contaminant into the Environment, any fines or orders of any kind that may be levied or made pursuant to an Environmental Law in each case relating to or otherwise arising out of any of the

Business Assets of any Somerset Group Member or the Somerset Group Business;

- (b) the direct or indirect use or proposed use of the proceeds of any Advance;
- (c) any Default; or
- (d) any Litigation to which any Indemnified Party is party arising out of the execution, delivery or performance of, or the enforcement of any right under any Loan Document.

Each Lender shall be constituted as the agent and bare trustee of each Indemnified Party who is its own Representative and shall hold and enforce each such Indemnified Party's rights under this paragraph for such party's benefit. The foregoing indemnity shall not apply in respect of losses and expenses of an Indemnified Party to the extent that they are determined by a Final Judgment to have directly resulted from the gross negligence or willful misconduct of that Indemnified Party.

### **17.3 Application of Payments**

Any payments received in respect of the Loan Obligations from time to time and any insurance monies received for the account of any Somerset Group Member may, notwithstanding any appropriation by any Somerset Income Fund Group Member, be appropriated to such parts of the Loan Obligations then due and owing by such Somerset Income Fund Group Member to the Senior Lenders and in such order as the Agent sees fit, and the Agent shall have the right to change any appropriation at any time. After the occurrence of an Event of Default, any such insurance moneys may, at the option of the Required Lenders, be used to repair or replace Collateral, be held as part of the Collateral or be appropriated to the Loan Obligations.

### **17.4 Set-Off**

The Loan Obligations will be paid by the Borrower without regard to any equities between the Borrower and each Senior Lender or any right of set-off or counterclaim. Any Indebtedness owing by any Senior Lender to the Borrower, direct or indirect, extended or renewed, actual or contingent, matured or not, may be set off or applied against, or combined with, the Loan Obligations by that Senior Lender at any time, either before or after maturity, without demand upon or notice to anyone.

### **17.5 Rights in Addition**

The rights conferred by each Loan Document are in addition to, and not in substitution for, any other rights any Senior Lender may have under that Loan Document or any other Loan Document, at law, in equity or by or under Applicable Law or any agreement. The Senior Lenders may proceed by way of any Litigation at law or in equity and no right of the Senior Lenders shall be exclusive of or dependent on any other. The Senior Lenders may exercise any of their respective rights separately or in combination and at any time.

## **17.6 Certificate Evidence**

A certificate prepared by any Senior Lender and provided to the Borrower setting forth any interest rate or any amount payable under this Agreement, including the amount of compensation or loss and expense payable under Section 8.7 or 17.2, shall be conclusive and bind the Borrower, absent manifest error.

## **17.7 Evidence of Indebtedness**

17.7.1 *Agent's Books.* The Agent shall open and maintain on its books accounts evidencing all Borrowings under the Revolving Facility and the Term Facility and all amounts owing by the Borrower to each Lender under the Revolving Facility and the Term Facility. The Agent shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower under the Revolving Facility and the Term Facility. The information entered in the accounts shall constitute, in the absence of manifest error, *prima facie* evidence of the existence and quantum of the obligations of the Borrower to each Lender under the Revolving Facility and the Term Facility. The Borrower shall, on reasonable notice to the Agent, be entitled to obtain promptly from the Agent copies of extracts of all entries made in such accounts. If there is any conflict or inconsistency between the accounts of the Agent maintained pursuant to this Subsection 17.7.1 and the accounts of any other party hereto or any holder of any Note, the accounts of the Agent shall govern and be binding on the other parties hereto and such holder, absent manifest error.

17.7.2 *Lenders May Request Promissory Notes.* Any Lender may request that its Rateable Share in Advances be evidenced by a promissory note (in the form of Schedule 11 or such other form to substantially the same effect as the Lender may accept) duly completed and executed by the Borrower (a "**Note**"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender. Thereafter, the Rateable Share of such Lender in all outstanding Advances evidenced by such Note and interest thereon shall at all times (including after any assignment pursuant to Section 17.10) be represented by one or more Notes payable to the order of the payee named therein or any assignee pursuant to Section 17.10, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that its Rateable Share on outstanding Advances once again be evidenced as described in Subsection 17.7.1.

17.7.3 *Swing Line Lenders' Books.* The Swing Line Lender shall open and maintain on its books accounts evidencing all Borrowings under the Swing Line and all amounts owing by the Borrower under the Swing Line. The Swing Line Lender shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower under the Swing Line. The information entered in the accounts shall constitute, in the absence of manifest error, *prima facie* evidence of the existence and quantum of the obligations of the Borrower to the Swing Line Lender under the Swing Line. The Borrower shall, on reasonable notice to the Swing Line Lender, be entitled to obtain promptly from the Swing Line Lender copies of extracts of all entries made in such accounts.

## **17.8 Notices**

Any notice, demand, consent, approval or other communication to be made or given under or in connection with this Agreement (a “**Notice**”) shall be in writing and may be made or given by personal delivery, by facsimile or (except to the Agent) by e-mail addressed to the Agent and the Borrower at their respective addresses set out below:

### ***To the Borrower:***

Somerset Entertainment Limited Partnership  
20 York Mills Boulevard  
Suite 600  
Box 900  
Toronto, Ontario, M2P 2C2

Attention: Chief Financial Officer  
Facsimile: 416 510 6915  
e-mail: rmeier@somersetent.com

### ***To the Agent:***

The Toronto-Dominion Bank  
Canadian Pacific Tower  
10 Wellington Street West, 30<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2

Attention: David Horton, National Accounts  
Telephone: 416 307 0249  
Facsimile: 416 308 3733

or to such other address as such party may from time to time notify the other in accordance with this Section 17.8, and to the Lenders at their respective Lending Offices. Any Notice made or given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or (except to the Agent) e-mail at the opening of business on the first Business Day following the transmittal thereof, provided the party sending such Notice receives confirmation of receipt from the recipient’s telecopy machine or e-mail system. Notwithstanding the foregoing, (a) the Agent shall not be deemed to have received any Notice until it is actually received by and brought to the attention of an officer of the Agent charged with the administration of this Agreement, (b) the Agent may in its discretion act upon verbal Notice from any Person reasonably believed by the Agent to be a Person authorized by the Borrower or Lender to give instructions under or in connection with this Agreement including, any request by the Borrower for a Borrowing and (c) any Notice received by the Agent on a day which is not a Business Day or after 10:00 a.m. on any Business Day shall, unless the Agent waives this Clause (c), be deemed to be received by the Agent at 9:00 a.m. on the next Business Day. The Senior Lenders shall not be responsible for any error or omission in such instructions or in the performance thereof.

## **17.9 Judgment Currency**

If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction, it becomes necessary to convert into the currency of the jurisdiction giving such judgment (the “**Judgment Currency**”) an amount due under any Loan Document in any other currency (the “**Original Currency**”), then the date on which the rate of exchange for conversion is selected by that court is referred to herein as the “**Conversion Date**”. If there is a change in the rate of exchange between the Judgment Currency and the Original Currency between the Conversion Date and the actual receipt by any Senior Lender of the amount due to it under such Loan Document or under such judgment, the Borrower shall, notwithstanding such judgment, pay all such additional amounts as may be necessary to ensure that the amount received by that Senior Lender in the Judgment Currency, when converted at the rate of exchange prevailing on the date of receipt, will produce the amount due in the Original Currency. The Borrower’s liability hereunder constitutes a separate and independent liability which shall not merge with any judgment or any partial payment or enforcement of payment of sums due under this Agreement.

## **17.10 Successors and Assigns**

17.10.1 *Benefit & Burden.* The Loan Documents shall enure to the benefit of and be binding on the parties thereto, their respective successors and each assignee of some or all of the rights or obligations of the parties under the Loan Documents permitted by this Section 17.10. Any reference in any such Loan Document to any party thereto shall (to the extent the context so admits) be construed accordingly.

17.10.2 *Borrower.* The Borrower may not assign all or any part of any of its rights or obligations in respect of any Credit Facility or under any Loan Document.

17.10.3 *Participation.* Each Lender may grant a participation to any other Person (a “**Participant**”) in the whole or any part of any of its Commitments (including its Rateable Share in any related Advances) under which the Participant shall be entitled to the benefit of the same rights under this Agreement with respect to such Participation as if it were a party hereto in the place and stead of such Lender provided that, in respect of such participated share of its Commitments and as amongst the Participant and all parties to this Agreement, (a) such Lender (and not the Participant) shall remain entitled to enforce such rights, and shall remain responsible for the performance of all obligations, of such Lender under this Agreement with respect to such participated share, (b) such Participant shall have no direct enforceable rights against any other party hereto in respect of such participated share and (c) no party hereto, other than the Lender granting such participation, shall have any obligations to such Participant with respect to such participated share.

17.10.4 *Assignments.* Each Lender (a “**Transferring Lender**”) may assign any of its Commitments (including its share in any related Advances made hereunder), or any part thereof in a minimum amount of CAD5,000,000, or such lesser amount as the Agent and the Borrower may permit, to:

- (a) another Lender or any Affiliate or Approved Fund of the Transferring Lender or another Lender; or

- (b) any other Person, with the consent of the Agent and, unless an Event of Default has occurred that is continuing, with the consent of the Borrower, such consent not to be unreasonably withheld or delayed.

Any such transfer to any Person permitted pursuant to the preceding sentence (a “**Transferee**”) shall be made pursuant to a loan transfer agreement (a “**Loan Transfer Agreement**”) substantially in the form of Schedule 12 (or in such other form to substantially the same effect as the Agent may approve). Each Loan Transfer Agreement must be delivered to the Agent at least five (5) Business Days before it takes effect (or such lesser time period as the Agent, in its discretion, may permit) accompanied, if such assignment is not being made to another Lender or an Affiliate or Approved Fund of an existing Lender, by payment to the Agent of a processing fee of CAD3,500. Each party hereto hereby agrees that any such Transferee shall be subject to the obligations identical to the obligations assigned under any such Loan Transfer Agreement and shall be entitled to rights identical to the rights assigned to such Transferee as if such Transferee were named in this Agreement as an original party in substitution for the Transferring Lender in respect of each such Commitment, or part thereof, assigned, and such Transferring Lender shall be released from all obligations in relation to each of its Commitments, or part thereof, so assigned.

17.10.5 *Pledge to US Reserve Bank.* Notwithstanding Subsection 17.10.4, any Lender may at any time, without the consent of the Borrower or the Agent, assign all or any portion of its rights under this Agreement and its Notes to a US Federal Reserve Bank; *provided, however*, that no such assignment to a US Federal Reserve Bank shall release the transferor Lender from its obligations hereunder.

17.10.6 *Schedule 1.* The Agent may from time to time revise Schedule 1 to record the Lenders and their respective Commitments after giving effect to assignments and/or transfers referred to in Subsection 17.10.4 above. Any such revised Schedule 1 shall be *prima facie* evidence of the identities and Commitments of the Lenders. The Agent shall provide a copy of any such revised Schedule 1 to the Borrower and each Lender promptly upon request.

17.10.7 *Disclosure.* Each Lender may disclose to any prospective or actual Participant in or Transferee of any rights or obligations in respect of any Credit Facilities any information regarding any Somerset Group Member or any of its Business Affairs so long as the prospective or actual Participant or Transferee agrees to be bound by the confidentiality provisions of this Subsection 17.10.7. Each Lender shall keep confidential and not disclose to any third party (excluding for certainty its own Representatives and Affiliates) any confidential information received by such Lender from the Borrower pursuant to this Agreement, save that any Lender may disclose any such confidential information (i) as provided in the preceding sentence, (ii) to the Agent or any other Lender, (iii) to any prospective or actual replacement Agent, (iv) to the extent required by Applicable Law, (v) to the extent required to protect the interests of any Lender in any actual, pending or threatened Litigation, or (vi) as may be necessary or desirable in order to enforce the rights of the Senior Lenders under any Secured Document.

17.10.8 *Substitute Lenders.* If at any time (a) the Borrower becomes obligated to compensate any Lender for additional amounts pursuant to Section 8.7 or increased payments pursuant to Subsection 8.10.1(d), (b) or any Lender becomes an Affected Senior Lender and either ceases to make its Rateable Share available in any Libor Loans pursuant to

Subsection 8.8.1 or Section 8.9 or ceases to make its Rateable Share in any Borrowing by way of Acceptances pursuant to Subsection 8.8.2, or (c) any Lender refuses or is deemed to refuse to any extension of the Revolving Facility pursuant to Subsection 9.1.1, then the Borrower may, on 10 Business Days' prior written notice to the Agent and such Lender (the "**Replaceable Lender**"), replace the Replaceable Lender by causing the Replaceable Lender to (and the Replaceable Lender shall be obligated to) assign and transfer its rights and obligations under this Agreement pursuant to Subsection 17.10.4 to another Lender that has agreed to accept such assignment and transfer or to another Person selected by the Borrower that is acceptable to the Agent, acting in its discretion exercised reasonably, (a "**Replacement Lender**") for a purchase price equal to the Loan Obligations owing to the Replaceable Lender, including all accrued interest and Fees and other amounts payable hereunder, together with such amount as would be payable to the Replaceable Lender under Subsection 17.2.1 if the Rateable Share of the Replaceable Lender in each outstanding Advance were actually being paid by the Borrower instead of being purchased by way of assignment and transfer pursuant to Subsection 17.10.4; provided that (i) neither the Agent nor any Lender shall have any obligation to the Borrower to find a Replacement Lender, (ii) in circumstances where a Replaceable Lender is sought to be replaced pursuant to this Subsection 17.10.8, in order for the Borrower to be entitled to replace such Replaceable Lender, such replacement must take place (A) no later than 120 days after the date the Replaceable Lender shall have notified the Agent that it had become a Replaceable Lender in the case of Clauses (a) and (b) above and (B) no later than the current (and not the extended) Revolving Facility Maturity Date in the case of a Replaceable Lender contemplated by Clause (c) above, (iii) in no event shall the Replaceable Lender be required to pay or surrender to such Replacement Lender any of the principal, interest, Fees or other amounts received by the Replaceable Lender pursuant to this Agreement and (iv) the Borrower shall only be entitled to replace a Replaceable Lender pursuant to this Subsection 17.10.8 if no Event of Default has occurred.

#### **17.11 Lead Arranger and Sole Bookrunner**

Neither the Lead Arranger and Sole Bookrunner nor any of its Representatives shall be under any obligation whatsoever:

- (a) to any Somerset Income Fund Group Member as a consequence of any failure or delay in performance by, or any breach by, any Senior Lender of any of its obligations under any Secured Document;
- (b) to any Senior Lender as a consequence of any failure or delay in performance by, or any breach by, any Somerset Income Fund Group Member of any of its obligations under any Secured Document; or
- (c) to any Senior Lender for any statements, representations or warranties in any Secured Document or any other agreement, document or instrument contemplated by any Secured Document or any other information provided pursuant to any Secured Document or any other agreement, document or instrument contemplated by any Secured Document or for validity, effectiveness, enforceability or sufficiency of any Secured Document or any other agreement, document or instrument contemplated thereby.

**17.12 Survival**

The Loan Obligations payable under Sections 8.7, 8.10, 17.1, and 17.2, (“**Indemnity Obligations**”) shall survive the Payment in Full of all other Loan Obligations owing by the Borrower to the Senior Lenders and shall continue in full force and effect until such Indemnity Obligations are irrevocably paid in full.

**17.13 Time of the Essence**

Time is of the essence of each provision of each Loan Document.

**17.14 Governing Law**

This Agreement (other than Section 16.3 which is governed by the laws of the Province of Quebec) shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction). Such choice of law shall, however, be without prejudice to or limitation of any other rights available to the Senior Lenders under the laws of any jurisdiction where any Somerset Income Fund Group Member or Credit Party or its property may be located.

**17.15 Jurisdiction**

17.15.1 *Submission to Jurisdiction and Waiver of Objections.* With respect to any claim arising out of this Agreement, any other Secured Document or any other agreement relating to any Secured Document (collectively, the “**Secured Agreements**”):

- (a) for the exclusive benefit of the Senior Lenders, the Borrower irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of:
  - (i) the Province of Ontario, Canada located at Toronto; and
  - (ii) the jurisdiction in which the chief executive office of each Somerset Income Fund Group Member is located or in which it is incorporated or under the laws of which it is formed located at the principal financial center of such jurisdiction,including any appellate court from any thereof; and
- (b) the Borrower irrevocably waives:
  - (i) any objection which it may have at any time to the laying of venue of any Litigation arising out of or relating to any of the Secured Agreements brought in any Court of Primary Jurisdiction;
  - (ii) any claim that any such Litigation brought in any Court of Primary Jurisdiction has been brought in an inconvenient forum;

- (iii) the right to object, with respect to such Litigation brought in any Court of Primary Jurisdiction, that such court does not have jurisdiction over the Borrower; and
- (iv) the right to require the Senior Lenders to post security for costs in any Litigation brought in any Court of Primary Jurisdiction.

17.15.2 *Senior Lender May Sue in Another Jurisdiction.* Nothing in this Agreement will be deemed to preclude the Senior Lenders from bringing any Litigation in respect of any Secured Agreement in any other jurisdiction.

17.15.3 *Final Judgment.* The Borrower agrees that a Final Judgment in any Litigation commenced in any Court of Primary Jurisdiction shall be conclusive and may be enforced in any other jurisdictions by suit on the Judgment or in any other manner provided by law.

17.15.4 *Waiver of Trial by Jury.* For the purposes of any Litigation commenced in the United States, each of the Borrower and each Senior Lender irrevocably waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any Litigation (a) to enforce or defend any rights under or in connection with or relating to any Secured Agreement, or (b) arising from or relating to any relationship existing in connection with any Secured Agreement, and agrees that any such Litigation shall be tried before a court and not before a jury. The Borrower hereby (c) certifies that no Representative of any Senior Lender has represented expressly or otherwise that such Senior Lender would not, in the event of Litigation, seek to enforce the foregoing waiver and (d) acknowledges that each Senior Lender has been induced to enter into this Agreement by, among other things, the waivers and certifications in this Subsection 17.15.4.

## **17.16 Service of Process**

17.16.1 *Manner of Service.* The Borrower irrevocably consents to the service of process out of the Courts of Primary Jurisdiction in accordance with the local rules of civil procedure or by mailing a copy thereof, by registered mail, postage prepaid to the Borrower at the address of the Borrower, or by sending a copy thereof by facsimile or e-mail in pdf format to the Borrower at the facsimile number or e-mail address of the Borrower determined under Section 17.8.

17.16.2 *Appointments of Agents for Service.* The Borrower irrevocably designates and appoints each other Credit Party as its agent to accept and acknowledge on its behalf any and all process which may be served in connection with any Litigation arising out of or relating to any Secured Agreement brought in any of the Courts of Primary Jurisdiction, such service, to the extent permitted by applicable law, being hereby conclusively acknowledged by the Borrower to be effective and binding service on it in every respect whether or not it is carrying on, or has at any time carried on, business in the jurisdiction in which the Courts of Primary Jurisdiction are located. The Borrower irrevocably consents to the service of process out of the Court of Primary Jurisdiction by personal service on the Borrower or on any such process agent.

17.16.3 *Acceptances of Appointments.* The Borrower confirms to the Senior Lenders that it has accepted its appointment to act as process agent on behalf of each other Credit Party contained in any Secured Agreement to which each such other Credit Party is party which may

be served in connection with any Litigation arising out of or relating to any such other Secured Agreement brought in any of the Courts of Primary Jurisdiction. Until the Loan Obligations are paid in full, the Borrower covenants and agrees to maintain each such appointment as such process agent.

**17.17 Invalidity**

If any provision of any Loan Document is determined to be invalid or unenforceable by a court of competent jurisdiction from which no further appeal lies or is taken, that provision shall be deemed to be severed therefrom, and the remaining provisions of such Loan Document shall not be affected thereby and shall remain valid and enforceable. The parties hereto shall (and, in the case of the Borrower, the Borrower shall cause each other Somerset Income Fund Group Member to), at the request of any other party hereto, enter into good faith negotiations to replace any invalid or unenforceable provision contained in any Loan Document with a valid and enforceable provision which has the commercial effect as close as possible to that of the invalid or unenforceable provision, to the extent permitted by law.

**17.18 Changes**

No agreement purporting to change (other than waive) any provision of any Loan Document shall be binding upon the parties hereto or thereto unless that agreement is in writing, signed by the Agent and the Borrower and it is entered into in compliance with Section 16.19. No waiver of strict performance or compliance with any provision of any Loan Document shall be binding on any party hereto or thereto unless such waiver is in writing signed by the party sought to be bound thereby and it is made in compliance with Section 16.19.

**17.19 *Limitations Act, 2002 (Ontario)***

The parties hereto agree to extend the limitation period under the *Limitations Act, 2002 (Ontario)*, other than one established by Section 15 of that Act, applicable to each Loan Document to which they are party and any claim thereunder to six (6) years.

**17.20 Entire Agreement**

There are no representations, warranties, conditions, other agreements or acknowledgments, whether direct or collateral, express or implied, that form part of or affect this Agreement or any other Loan Document other than as expressed herein or in such other Loan Document. The execution of each Loan Document has not been induced by, nor does the Borrower rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in any Loan Document.

**17.21 This Agreement to Govern**

If there is any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document to which any Somerset Income Fund Group Member is party, the provisions hereof shall govern and apply to the extent of the inconsistency. Notwithstanding the foregoing, this Section 17.21 shall not apply to limit, restrict, prejudice or otherwise affect or impair in any way the rights of the Senior Lenders under the terms of any

Security after those rights have become enforceable. For clarity, and notwithstanding anything to the contrary contained in the Security Documents, the Security granted by each Credit Party shall not become enforceable unless an Event of Default has occurred.

#### **17.22 Tax Reorganization**

The parties hereto acknowledge that the Fund may seek to reorganize the organizational structure of the Fund and its Subsidiaries as a consequence of changes in tax laws that are currently scheduled to take effect in 2011. Although the specific form of such reorganization is not known at the present time, it is possible that the Fund may cease to exist, or may cease to own the Borrower, by virtue of such reorganization. The Agent and the Lenders agree to negotiate in good faith with the Borrower to amend this Agreement and the other Loan Documents (if applicable) to the extent required to accommodate such a reorganization; provided that such reorganization results in ultimate ownership and Control of the Borrower being substantially identical to the ownership and Control of the Fund prior to the commencement of any steps in such reorganization and none of the assets, liabilities and financial condition of any of the Borrower and its Subsidiaries on both an unconsolidated and a consolidated basis are changed in any material way (provided that the Agent and the Lenders will in good faith consider permitting the Subordinated Debt currently owing by the Borrower to the Fund being replaced or amended in connection with such a reorganization provided that any continuing obligations of the Borrower in relation thereto are documented in a manner acceptable to the Required Lenders in their reasonable discretion and are not changed in any material way that is not approved by the Required Lenders in their reasonable discretion, the holders thereof are acceptable to the Required Lenders in their reasonable discretion and those continuing obligations remain subordinated to the Secured Obligations in the same manner and to the same extent as the Subordinated Debt or otherwise to the satisfaction of the Required Lenders in their reasonable discretion).

#### **17.23 Execution**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) to the other parties to this Agreement by facsimile transmission or e-mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

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**IN WITNESS WHEREOF** the parties have executed this second amended and restated credit agreement as of the date first written above.

**BORROWER:**

**SOMERSET ENTERTAINMENT  
LIMITED PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

Per:                     *“Andy Burgess”*  
Authorized Signatory  
Andy Burgess  
Chief Executive Officer

**THE LENDERS:**

**THE TORONTO-DOMINION BANK**

Per:                   “David Horton”  
Authorized Signatory  
David Horton  
Senior Manager

Per:                   “Bill Veale  
Authorized Signatory  
Bill Veale  
Associate Vice President  
National Accounts

**THE AGENT:**

**THE TORONTO-DOMINION BANK**

Per:           “Michael A. Freeman”  
Authorized Signatory  
Michael A. Freeman  
Vice President  
Loan Syndications - Agency

**SCHEDULE 1  
COMMITMENTS**

<b><u>Lenders</u></b>	<b><u>Revolving Commitment</u></b>	<b><u>Swing Line Commitment</u></b>	<b><u>Term Commitment</u></b>	<b><u>Total</u></b>
The Toronto-Dominion Bank	CAD5,000,000	CAD2,000,000	CAD11,200,000	CAD18,200,000
<b>TOTALS:</b>	<b>CAD5,000,000</b>	<b>CAD2,000,000</b>	<b>CAD11,200,000</b>	<b>CAD18,200,000</b>

**SCHEDULE 2  
FORM OF BORROWING REQUEST**

**TO:           The Toronto-Dominion Bank  
              Canadian Pacific Tower  
              100 Wellington Street West, 30<sup>th</sup> Floor  
              Toronto, Ontario, M5K 1A2**

**Attention:   Kim Hebert, Customer Service Officer  
Facsimile:   416 307 1641**

**RE:           Credit Facilities for Somerset Entertainment Limited Partnership**

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”) among Somerset Entertainment Limited Partnership as Borrower, The Toronto-Dominion Bank, as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Borrowing Request which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

**1.    Request.** The Borrower hereby requests a Borrowing under the Credit Facilities as follows:

- (a)   **Credit Facility**
  - ( )    Revolving Facility
  - ( )    Term Facility

(b)   **Borrowing Date**

\_\_\_\_\_

(c)   **Aggregate amount of Borrowing**

CAD \_\_\_\_\_  
USD \_\_\_\_\_

(d)   **Type and Amount of Borrowing**

(i)   ( )

	<u>Amount</u>	<u>Converted From (if Applicable)</u>
( ) Canadian Prime Rate Loan	CAD _____	_____
( ) US Base Rate Loan	USD _____	_____

- (ii) ( ) Acceptances (BA Equivalent Advance or Discount Note pursuant to Section 5.10 or 5.11 of the Credit Agreement)

<u>Face Amount</u>	<u>Term in Months</u>	<u>Rollover Amount (if Applicable)</u>	<u>Converted From (if Applicable)</u>
CAD _____	_____	CAD _____	_____

- (iii) ( ) Libor Loan

<u>Amount</u>	<u>Interest Period</u>	<u>Rollover Amount (if Applicable)</u>	<u>Converted From (if Applicable)</u>
USD _____	_____	USD _____	_____

2. **Other.** The Borrower represents, warrants and agrees:

- (a) Each of the representations and warranties deemed to be repeated in Section 13.2 of the Credit Agreement are (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true, accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case on and as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof.
- (b) No Default has occurred and is continuing on the date hereof or will result from the Borrowing requested herein.
- (c) The undersigned will immediately notify you if it becomes aware of the occurrence of any event between the date hereof and the Borrowing Date which would mean that the statements in the immediately preceding paragraphs (a) and (b) would not be true if made on the Borrowing Date.
- (d) All other conditions precedent to this Borrowing set out in Article 11 of the Credit Agreement have been fulfilled or waived in writing by the Required Lenders.

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

**SOMERSET ENTERTAINMENT LIMITED  
PARTNERSHIP**

**by its General Partner  
Somerset Entertainment GP Inc.**

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

Name:

Title:

**SCHEDULE 3  
FORM OF CANCELLATION NOTICE**

**TO:           The Toronto-Dominion Bank  
              Canadian Pacific Tower  
              100 Wellington Street West, 30<sup>th</sup> Floor  
              Toronto, Ontario, M5K 1A2**

**Attention:   Kim Hebert, Customer Service Officer  
Facsimile:   416 307 1641**

**RE:           Credit Facilities for Somerset Entertainment Limited Partnership**

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”) among Somerset Entertainment Limited Partnership, as Borrower, The Toronto-Dominion Bank, as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Cancellation Notice which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

Notice is hereby given in accordance with Section 9.3 of the Credit Agreement that the undersigned wishes to cancel the Total Commitment by the amount of CAD \_\_\_\_\_, allocated as to CAD \_\_\_\_\_ to the Revolving Facility and CAD \_\_\_\_\_ to the Swing Line, such cancellation to take effect on \_\_\_\_\_, 200\_\_\_\_.

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

**SOMERSET ENTERTAINMENT LIMITED  
PARTNERSHIP**

**by its General Partner  
Somerset Entertainment GP Inc.**

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

**SCHEDULE 4  
FORM OF REPAYMENT NOTICE**

**TO:           The Toronto-Dominion Bank  
              Canadian Pacific Tower  
              100 Wellington Street West, 30<sup>th</sup> Floor  
              Toronto, Ontario, M5K 1A2**

**Attention:   Kim Hebert, Customer Service Officer  
Facsimile:   416 307 1641**

**RE:           Credit Facilities for Somerset Entertainment Limited Partnership**

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”) among Somerset Entertainment Limited Partnership as Borrower, The Toronto-Dominion Bank as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Repayment Notice which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

Notice is hereby given in accordance with Section \_\_\_\_\_ of the Credit Agreement that the undersigned commits to repay the \_\_\_\_\_<sup>1</sup> under the \_\_\_\_\_ Facility<sup>2</sup> [which has a current Period End Date expiring on \_\_\_\_\_, \_\_\_\_\_] in the amount of [CAD/USD] \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

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

**SOMERSET ENTERTAINMENT LIMITED  
PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

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

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<sup>1</sup> Specify type of Borrowing

<sup>2</sup> Specify Revolving or Term

**SCHEDULE 5  
SECURITY**

**BORROWER**

1. General Security Agreement from the Borrower
2. General Hypothecation of Stocks and Bonds from the Borrower, together with:
  - (a) the share certificates representing the entire issued Capital Stock of Somerset Canada
  - (b) stock transfers
  - (c) stock transfer powers of attorney
  - (d) the Somerset Canada Notes
3. Assignment of Term Deposits from the Borrower
4. Principal Agreement Assignment Agreement from the Borrower
5. Guarantee of all Indebtedness of Somerset Canada to the Senior Lenders

***Somerset Canada***

6. Guarantee of all Indebtedness of the Borrower to the Senior Lenders from Somerset Canada
7. General Security Agreement from Somerset Canada
8. Intellectual Property Security Agreement from Somerset Canada
9. General Hypothecation of Stocks and Bonds from Somerset Canada, together with:
  - (a) the share certificates representing the entire capital stock of Somerset UK and Somerset US,
  - (b) stock transfers
  - (c) stock transfer powers of attorney
  - (d) the Somerset US Notes
10. Assignment of Term Deposits from Somerset Canada
11. Assignment of Insurance Proceeds Agreement from Somerset Canada
12. Insurance Assignment Acknowledgment relative to Item #11

13. Standard IBC Mortgage Clause
14. Subordination Agreements, Limitation of Interest Letters, etc. relative to Item #5
15. Principal Agreement Assignment Agreement from Somerset Canada
16. Acknowledgment re Purchase Agreement relative to Item #15

***Somerset GP***

17. Guarantee of the Indebtedness of the Borrower to the Senior Lenders from Somerset GP
18. General Security Agreement from Somerset GP
19. General Hypothecation of Stocks and Bonds from Somerset GP, together with:
  - (a) the unit certificates representing the general partner interest in the Borrower
  - (b) unit transfer
  - (c) unit transfer power of attorney
20. Assignment of Term Deposits from Somerset GP

***Somerset Trust***

21. Guarantee of the Indebtedness of the Borrower to the Senior Lenders from Somerset Trust
22. General Hypothecation of Stocks and Bonds from Somerset Trust, together with:
  - (a) the unit certificates for Class A Units,
  - (b) unit transfers
  - (c) unit transfer power of attorney
23. Assignment of Term Deposits from Somerset Trust

***The Fund***

24. Guarantee of the Indebtedness of the Borrower to the Senior Lenders from the Fund
25. General Hypothecation of Stocks and Bonds from the Fund, together with:
  - (a) share certificates representing all the Capital Stock in Somerset GP
  - (b) stock transfers
  - (c) stock transfer power of attorney

26. Assignment of Term Deposits from the Fund

*Somerset US*

27. Guarantee, Pledge and Security Agreement by Somerset Entertainment Inc. of all Indebtedness of the Borrower and Somerset Canada to the Senior Lenders

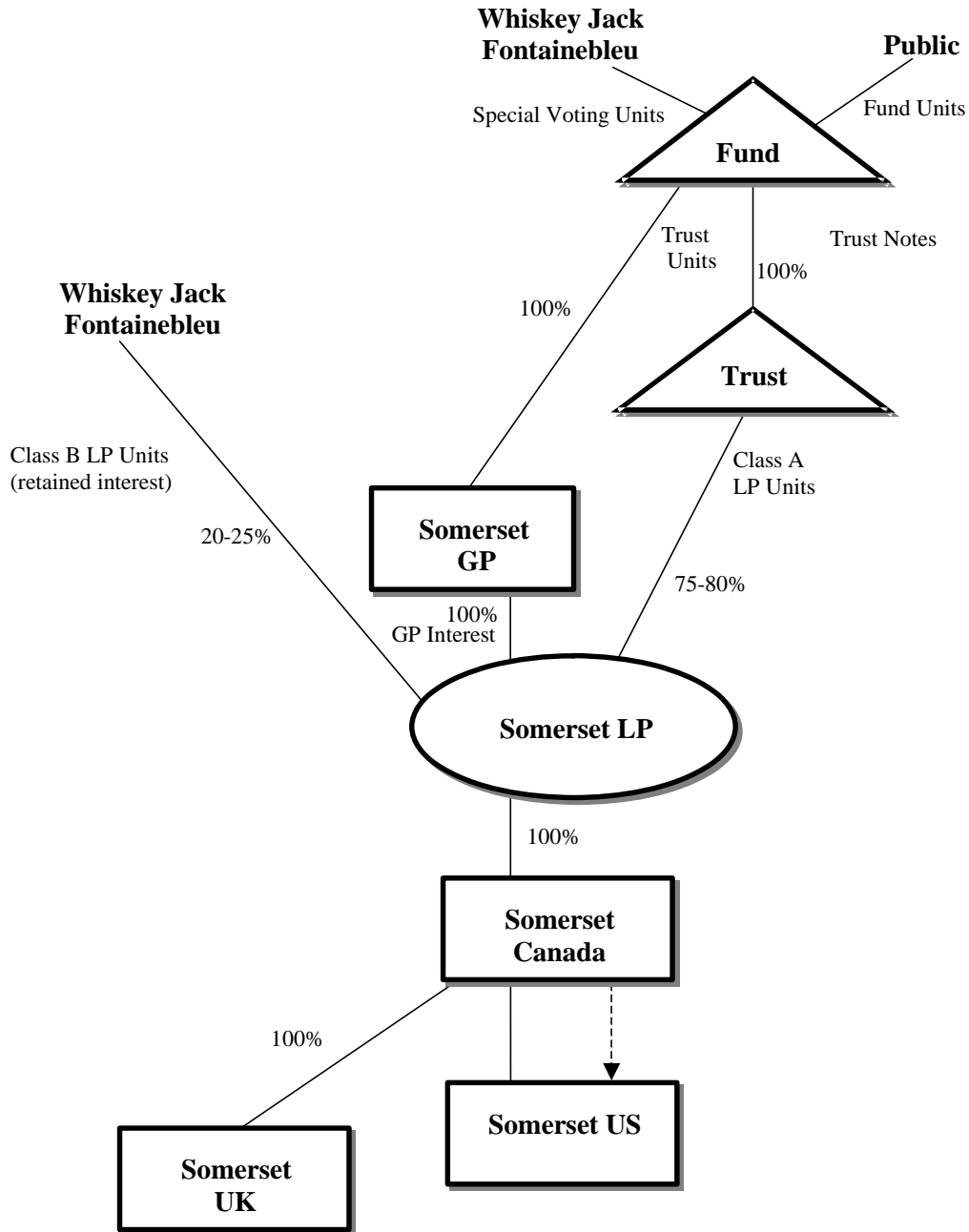
28. Trademark Security Agreement from Somerset Entertainment Inc.

29. Copyright Security Agreement from Somerset Entertainment Inc.

**SCHEDULE 6  
LITIGATION**

NONE

### SCHEDULE 7 ORGANIZATION CHART



**SCHEDULE 8  
ENVIRONMENTAL DISCLOSURE**

NONE

**SCHEDULE 9  
FORM OF COMPLIANCE CERTIFICATE**

**TO: The Toronto-Dominion Bank  
Canadian Pacific Tower  
100 Wellington Street West, 26<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2**

**Attention: David Horton, National Accounts  
Facsimile: 416 308 3733**

**RE: Credit Facilities for Somerset Entertainment Limited Partnership**

---

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”) between Somerset Entertainment Limited Partnership as Borrower, The Toronto-Dominion Bank, as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Compliance Certificate which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

This Compliance Certificate is given pursuant to Section 14.1.6[(a)/(b)] of the Credit Agreement in respect of the Test Period ending on \_\_\_\_\_, 20\_\_\_\_ (the “**Relevant Test Period**”).

The Borrower hereby certifies as follows:

- (a) **Total Debt/EBITDA Ratio.** The attachment hereto shows the calculation of the Total Debt/EBITDA Ratio for the Relevant Test Period to be \_\_\_\_\_ : 1 which does not exceed the maximum limit of [1.75:1/1.50:1/1.00:1] prescribed for this ratio.
- (b) **Fixed Charge Coverage Ratio.** The attachment hereto shows the calculation of the Fixed Charge Coverage Ratio for the Relevant Test Period to be \_\_\_\_\_ : 1 which is not less than the minimum limit of 1.00:1 prescribed for this ratio.
- (c) **Applicable Margin.** The attachment shows that the Applicable Margin has changed to / remains the same as set out below:

***Revolving Facility, Swing Line and Term Facility***

<b>Total Debt/ EBITDA Ratio</b>	<b>Applicable Margin for Floating Rate Loans</b>	<b>Applicable Margin for Libor Loans, Acceptances and Standby Instruments</b>	<b>Applicable Margin for Standby Fee</b>
_____ : 1	_____ %	_____ %	_____ %

Each of the calculations in the attachment hereto demonstrates compliance with the relevant financial tests listed above as at, or for the Relevant Test Period ending on, \_\_\_\_\_, \_\_\_\_\_.

The attachment hereto shows that the portion of EBITDA of the Borrower for the Relevant Test Period attributable to Exempt Subsidiaries to be \_\_\_\_\_%, which does not exceed 15% of the EBITDA of the Borrower for the Relevant Test Period.

The undersigned represents, warrants and agrees:

- (a) Each of the representations and warranties deemed to be repeated in Section 13.2 of the Credit Agreement are (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true, accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case on and as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof.
- (b) No Default has occurred and is continuing on the date hereof.

The undersigned acknowledges its obligations under the Loan Documents, confirms that it remains bound by each of the obligations expressed to be binding upon it in the Loan Documents and agrees to punctually pay and perform its obligations under the Loan Documents in accordance with their respective terms.

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

Yours very truly,

**SOMERSET ENTERTAINMENT  
LIMITED PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

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

Name:

Title:

**SCHEDULE 10  
CREDIT PARTY ACKNOWLEDGMENT**

**TO:           The Toronto-Dominion Bank  
              Canadian Pacific Tower  
              100 Wellington Street West, 26<sup>th</sup> Floor  
              Toronto, Ontario, M5K 1A2**

**Attention:   David Horton, National Accounts  
Facsimile:   416 308 3733**

**RE:           Credit Facilities for Somerset Entertainment Limited Partnership**

---

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”) among Somerset Entertainment Limited Partnership as Borrower, The Toronto-Dominion Bank, as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Acknowledgment which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

The undersigned (the “**Credit Party**”) acknowledges its obligations under the Loan Documents to which it is party and confirms that it remains bound by each of the obligations expressed to be binding upon it in the Loan Documents to which it is party and agrees to punctually pay and perform its obligations under the Loan Documents to which it is party in accordance with their respective terms.

This Acknowledgment shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction).

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

---

**<Credit Party>**

**SCHEDULE 11  
FORM OF NOTE**

**PROMISSORY NOTE**

[Date]

**SOMERSET ENTERTAINMENT LIMITED PARTNERSHIP**, an Ontario limited partnership (the "**Borrower**"), promises to pay to the order of \_\_\_\_\_ (the "**Lender**") the aggregate unpaid principal amount of the Lender's Rateable Share of all Advances made by the Lender to the Borrower pursuant to the Credit Agreement (as hereinafter defined), in immediately available, freely transferable, cleared funds to the Agent's Accounts, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Credit Agreement. The Borrower shall pay the principal of and accrued and unpaid interest on the Advances in full at the times and in the manner specified in the Credit Agreement.

The Lender shall, and is hereby authorized to, record on the schedule attached hereto, or to otherwise record in accordance with its usual practice, the date and amount of its Rateable Share in each Advance and the date and amount of each principal, interest and fee payment hereunder.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the third amended and restated credit agreement dated as of October 16, 2008 (which, as it may be changed and in effect from time to time, is herein called the "**Credit Agreement**"), among the Borrower, The Toronto-Dominion Bank as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders, and The Toronto-Dominion Bank, as Administration Agent, to which Credit Agreement reference is hereby made for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated. This Note is guaranteed pursuant to certain Guarantees and secured by certain Security, all as outlined in more detail in the Credit Agreement, and reference is made thereto and to the other Loan Documents for a statement of the terms and provisions thereof. Words used herein and not otherwise defined herein are used with the defined or extended meanings attributed to them in the Credit Agreement.

The Borrower hereby waives demand, presentment for payment, dishonour, notice of dishonour, protest, noting of protest and any other notice or defense to payment which might otherwise exist.

This Note shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of any other jurisdiction).

This Note may only be transferred pursuant to and in accordance with the provisions of the Credit Agreement.

IN WITNESS WHEREOF this Note is issued this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SOMERSET ENTERTAINMENT  
LIMITED PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE OF ADVANCES AND PAYMENTS OF PRINCIPAL  
TO NOTE OF \_\_\_\_\_**

**DATED \_\_\_\_\_**

<u>Date</u>	<u>Type of Advance</u>	<u>Principal Amount of Rateable Share of Advance</u>	<u>Period End Date</u>	<u>Principal Amount Paid</u>	<u>Unpaid Balance</u>
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**SCHEDULE 12  
FORM OF LOAN TRANSFER AGREEMENT**

**LOAN TRANSFER AGREEMENT**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**AMONG:**

<\*>

(hereinafter called the “**Transferor**”)

- and -

<\*>

(hereinafter called the “**Transferee**”)

- and -

<\*>

acting as administration agent for and on behalf of itself and the other Senior Lenders with respect to the Credit Facilities and certain of the Loan Documents

(hereinafter called the “**Agent**”)

**RECITALS:**

A. Somerset Entertainment Limited Partnership, as Borrower, The Toronto-Dominion Bank, as Lead Arranger and Sole Bookrunner, the Institutions named therein as Lenders, and The Toronto-Dominion Bank, as Administration Agent, entered into a third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Credit Agreement**”). Words defined or given extended meanings in the Credit Agreement (and not otherwise defined herein) are used with the same respective defined or extended meanings in this loan transfer agreement.

B. The Transferor is a Lender under the Credit Agreement with the following Commitments determined before the transfer contemplated hereby takes effect:

Revolving Commitment	Term Commitment	Swing Line Commitment
CAD _____	CAD _____	CAD _____

- C. The Transferor has agreed to transfer to the Transferee the amounts of its Commitments (the “**Relevant Transfer Amounts**”) and/or the proportions of its Commitments (the “**Relevant Transfer Percentages**”) indicated in the table below:

<b>Credit Facility</b>	<b>Relevant Transfer Amount</b>	<b>Relevant Transfer Percentage</b>
Revolving Facility	CAD_____	_____ %
Term Facility	CAD_____	_____ %
Swing Line	CAD_____	_____ %

The portion of the Transferor’s Commitments so transferred is hereinafter called the “**Transferred Commitments**”.

**WITNESSETH THAT** in consideration of the mutual covenants herein contained and other valuable consideration now paid by each party hereto, the one to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Transferred Commitment.** The Transferor confirms to each of the Transferee and the other parties to the Credit Agreement that the Transferred Commitments relate to the Relevant Transfer Amounts and Relevant Transfer Percentages of its Transferred Commitments (including the corresponding percentage of each outstanding Advance under each such portion of its respective Transferred Commitments).
2. **Transfer.** As of and from the fifth (5<sup>th</sup>) Business Day after the date the Agent notifies the Transferor and Transferee that it has executed this loan transfer agreement, or such other date as the Agent may agree upon with the Transferor and Transferee (herein called the “**Effective Date**”) and subject to the terms and conditions herein contained:
  - (a) the Transferee assumes obligations identical to the obligations of the Transferor under the Credit Agreement arising on or after the Effective Date in relation to the Transferred Commitments (herein called the “**Transferred Obligations**”) and agrees to perform and be responsible for such obligations as if the Transferee were named in the Credit Agreement and the other Loan Documents to which the Transferor is party as an original party in substitution for the Transferor or its predecessor by amalgamation or merger or in title, as applicable, in respect of the Transferred Obligations;
  - (b) the Agent on its own behalf and on behalf of each of the Senior Lenders other than the Transferor (herein called the “**Other Senior Lenders**”) hereby releases and forever discharges the Transferor of and from any and all losses and expenses and obligations arising on or after the Effective Date under, by reason of, or in connection with the Transferred Obligations;

- (c) the Agent on its own behalf and on behalf of each of the Other Senior Lenders acknowledges and agrees that, except as otherwise provided in Section 3 of this loan transfer agreement, the Transferee is hereby assigned and entitled to rights identical to the rights of the Transferor under the Credit Agreement existing on or arising after the Effective Date in relation to the Transferred Commitments (herein called the “**Transferred Rights**”); and
- (d) the Transferor hereby releases and forever discharges each of the Agent and the Other Senior Lenders of and from any and all losses and expenses and obligations arising after the Effective Date under, by reason of, or in connection with the Transferred Rights or the Transferred Obligations.

3. **Transitional Provisions.** Subject to the terms and conditions contained herein:

- (a) any payments due and payable by the Borrower on or before the Effective Date in respect of the Transferred Commitments; and
- (b) any payments due and payable by the Borrower after the Effective Date, but payable in respect of the Transferor’s Rateable Share in any Libor Loan or issue of Acceptances outstanding on the Effective Date,

shall, upon receipt by the Agent, be paid to the Transferor. For certainty, the Transferee acknowledges that its Rateable Share in Advances by way of Libor Loans and issues of Acceptances outstanding under the Credit Facilities as at the Effective Date will only take effect on the Period End Dates for those Libor Loans and issues of Acceptances.

- 4. **Payments Between Transferor and Transferee.** Any payments between the Transferor and Transferee required to be made in relation to this loan transfer agreement (including any transitional payments in relation to matters referred to in paragraph 3 above) are strictly a matter as between the Transferor and Transferee and shall, as between the Borrower, the Agent and the Other Senior Lenders, on the one hand, and the Transferor and Transferee on the other hand, be deemed to have been paid.
- 5. **Copy to the Borrower.** Each of the Transferor and Transferee hereby authorizes the Agent to provide a signed copy of this loan transfer agreement to the Borrower in acceptance of the offer contained in the Credit Agreement of the Borrower to the Transferee to become a party to the Credit Agreement in respect of the Transferred Commitments. Subject to the consent of the Borrower to the assignment contemplated hereby if such consent is required by Subsection 17.10.4, upon receipt by the Borrower of a signed copy of this loan transfer agreement, the provisions of Subsection 17.10.4 of the Credit Agreement in respect of the Transferred Participation shall become effective and be binding upon all parties to the Credit Agreement.
- 6. **Power of Attorney.** The Transferee irrevocably appoints, authorizes and directs the Agent, as the attorney and agent of the Transferee, with full power of substitution and delegation, to complete, execute and deliver on behalf of the Lenders, including the Transferee, each Loan Document to be executed by the Agent on behalf of the Lenders, and each agreement, document or instrument to be executed by the Agent on behalf of the

Lenders pursuant to each Loan Document, and to take such action on behalf of the Lenders as may be authorized or directed pursuant to any such Loan Document, subject in each case to the terms and conditions of Article 16 of the Credit Agreement.

7. **Interpretation.** This loan transfer agreement shall be governed by, and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction the laws of another jurisdiction) and shall be construed as supplemental to and form part of the Credit Agreement. Transmission of a copy of an executed signature page of this loan transfer agreement by facsimile transmission or by e-mail in pdf format shall be as effective as delivery of a manually executed counterpart hereof.

**IN WITNESS WHEREOF** the parties hereto have executed this agreement as of the day and year first above written.

\_\_\_\_\_  
*as Transferor*

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
*as Transferee*

By: \_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
*as Agent*

By: \_\_\_\_\_  
Authorized Signatory

**ACCEPTANCE<sup>3</sup>**

By its execution and delivery of this Acceptance, the Borrower consents to the assignment and transfer recorded above, acknowledges and agrees to the provisions recorded above, and confirms its agreement to the provisions of Subsection 17.10.4 of the Credit Agreement with respect to such assignment and transfer.

**SOMERSET ENTERTAINMENT  
LIMITED PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

Per: \_\_\_\_\_  
Authorized Signatory

---

<sup>3</sup> Applicable only prior to the occurrence of an Event of Default

**SCHEDULE 13  
CONFIRMATION OF SECURITY**

**TO:           The Toronto-Dominion Bank  
              Canadian Pacific Tower  
              100 Wellington Street West, 26<sup>th</sup> Floor  
              Toronto, Ontario, M5K 1A2**

**Attention:   David Horton, National Accounts**

**RE:           Credit Facilities for Somerset Entertainment Limited Partnership**

---

Reference is made to the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time to time, the “**Third Amended Credit Agreement**”) among Somerset Entertainment Limited Partnership, as Borrower, the institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Confirmation which are defined or given extended meanings in the Second Amended Credit Agreement have the respective defined or extended meanings attributed to them in the Third Amended Credit Agreement.

It is a condition precedent to the entry into effect of the amendments to the Second Amended Credit Agreement contemplated by the Third Amended Credit Agreement that each of the undersigned execute this Confirmation in favour of the Senior Lenders to confirm (a) the continuing obligations of each of the undersigned to the Senior Lenders under its existing Guarantee (its “**Existing Guarantee**”) and (b) the continued validity and effect of the Liens granted by each of the undersigned in favour of the Senior Lenders as security for its Existing Guarantee (its “**Existing Security**”).

Accordingly, to induce the Senior Lenders to amend and restate the Second Amended Credit Agreement in the manner contemplated by the Third Amended Credit Agreement, each of the undersigned:

1. Confirms and agrees that the guarantees, postponements, other obligations and Liens expressed to be binding on it and its Business Assets under or pursuant to its Existing Guarantee shall, except as expressly provided otherwise herein, be unaffected by and shall be binding upon the undersigned and its Business Assets and continue in full force and effect guaranteeing and securing the Secured Obligations of the Borrower notwithstanding the amendments to the Second Amended Credit Agreement contemplated by the Third Amended Credit Agreement with each reference therein to the Second Amended Credit Agreement being construed as a reference to the Third Amended Credit Agreement, and the execution, delivery and entry into effect of the amendments to the Second Amended Credit Agreement contemplated by the Third Amended Credit Agreement shall not in any manner whatsoever reduce, release, discharge, impair or otherwise prejudice or change the rights of the Senior Lenders arising under, by reason of

or otherwise in respect of such guarantees, postponements, other obligations and Liens constituted by its Existing Guarantee, except to the extent changed hereby.

2. Confirms and agrees that the Liens, postponements and other obligations expressed to be created under or pursuant to its Existing Security shall be binding upon it and its Business Assets and shall, except as expressly provided herein, be unaffected by and shall continue in full force and effect notwithstanding the amendments to the Second Amended Credit Agreement contemplated by the Third Amended Credit Agreement with each reference therein to the Second Amended Credit Agreement being construed as a reference to the Third Amended Credit Agreement, and the execution, delivery and entry into effect of the amendments to the Second Amended Credit Agreement contemplated by the Third Amended Credit Agreement shall not in any manner whatsoever reduce, release, discharge, impair or otherwise prejudice or change the rights of the Senior Lenders arising under, by reason of or otherwise in respect of such Liens, postponements and other obligations constituted by its Existing Security, except to the extent changed hereby.
3. Ratifies and confirms its obligations under its Existing Guarantee and confirms and agrees that its Existing Guarantee continues in full force and effect without change, except to the extent changed hereby, and is binding upon the undersigned and shall guarantee the obligations expressed to be guaranteed thereby as contemplated by this Confirmation, including the Secured Obligations of the Borrower.
4. Ratifies and confirms its obligations under its Existing Security and confirms and agrees that its Existing Security continues in full force and effect without change, except to the extent changed hereby, and is binding upon the Business Assets of the undersigned and continues to secure the obligations expressed to be secured thereby as contemplated by this Confirmation, including its obligations under its Existing Guarantee as changed hereby.
5. Confirms and agrees that each reference in its Existing Guarantee and its Existing Security to the Second Amended Credit Agreement shall be construed as a reference to the Third Amended Credit Agreement.
6. Agrees with the Senior Lenders to extend the limitation period under the *Limitations Act, 2002* (Ontario), other than one established by Section 15 of that Act, applicable to each of this Confirmation, its Existing Guarantee and its Existing Security and any claim thereunder to six (6) years.

This Confirmation shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction). Such choice of law shall, however, be without prejudice to or limitation of any other rights available to the Senior Lenders under the laws of any jurisdiction where the undersigned or its Business Assets may be located.

Transmission to the Agent of a copy of an executed signature page of this Confirmation (including any change to this Confirmation) by facsimile transmission or e-mail in pdf format shall be as effective as delivery of an original manually executed counterpart hereof.

This Confirmation may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Confirmation to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Confirmation (including any change to this Confirmation) by facsimile transmission or e-mail in pdf format shall be as effective as delivery of an original manually executed counterpart hereof. Each of the undersigned shall be bound by this Confirmation when it is so executed and delivered by it whether or not any other Credit Party so executes and delivers a counterpart hereof.

**TO WITNESS** this Confirmation, each of the undersigned has caused it to be duly executed as of the Third Amended Closing Date.

**SCHEDULE 14  
FORM OF BORROWING BASE REPORT**

**TO: The Toronto-Dominion Bank  
Canadian Pacific Tower  
100 Wellington Street West, 26<sup>th</sup> Floor  
Toronto, Ontario, M5K 1A2**

**Attention: David Horton, National Accounts  
Facsimile: 416 308 3733**

**Credit Facility for Somerset Entertainment Limited Partnership**

This Borrowing Base Report is delivered to you pursuant to Subsection <11.1(h)/14.1.6(c)> of the third amended and restated credit agreement dated as of October 16, 2008 (as changed and in effect from time, the “**Credit Agreement**”) among Somerset Entertainment Limited Partnership, as Borrower, the institutions named therein as Lenders and The Toronto-Dominion Bank, as Administrative Agent. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein which are defined in the Credit Agreement have the respective meanings provided in the Credit Agreement.

The Borrower refers to the list of Eligible Receivables appended hereto (the “**Eligible Receivables List**”) prepared as at \_\_\_\_\_, 20\_\_ (the “**Relevant Month End**”).

The Borrower, by its duly authorized signing officer(s), hereby certifies as follows:

**1.** The following is the computation of the Borrowing Base:

<b>A</b>	Amount of Eligible Receivables	CAD_____ (A)
<b>B</b>	The amount of Statutory Prior Claims	CAD_____ (B)
	<b>BORROWING BASE = 75% x A - B</b>	CAD_____

**2.** The Eligible Receivables List sets out the following:

- (a) the Eligible Receivables (other than Pre-Approved Accounts Receivables) that have any amounts owing that have been outstanding for not more than 90 days; and
- (b) the Eligible Receivables that are Pre-Approved Accounts Receivable that have any amounts owing that have been outstanding for not more than 120 days and specifying the name of the relevant company, amount and aging relating to each such Eligible Receivables.

[Signature page to Third Amended and Restated Credit Agreement]

3. The Credit Amount of all Advances outstanding under the Revolving Facility and the Swing Line as at the Relevant Month End are as follows::

<b>A</b>	The Credit Amount of all outstanding Canadian Prime Rate Loans	CAD_____ (A)
<b>B</b>	The Credit Amount of all outstanding US Base Rate Loans	CAD_____ (B)
<b>C</b>	The Credit Amount of all outstanding Acceptances	CAD_____ (C)
<b>D</b>	The Credit Amount of all outstanding Libor Loans	CAD_____ (D)
<b>E</b>	The Credit Amount of all outstanding Standby Instruments	CAD_____ (E)
	<b>TOTAL CREDIT AMOUNT OF ALL OUTSTANDING ADVANCES = A + B + C + D + E</b>	CAD_____

4. The Borrowing Base surplus as at the Relevant Month End is as follows::

<b>A</b>	Borrowing Base (from paragraph 1 above)	CAD_____ (A)
<b>B</b>	Total Credit Amount of all outstanding Advances (from paragraph 3 above)	CAD_____ (B)
	<b>BORROWING BASE SURPLUS = A - B</b>	CAD_____

The Borrower, by its duly authorized signing officer(s), hereby represents and warrants to the Lender that:

- (a) All information contained herein or appended hereto is true and correct in all material respects as of the Relevant Month End and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the information not materially misleading.
- (b) The information appended hereto has been prepared in accordance with GAAP on a consistent basis with prior reporting periods.

**DATED** as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SOMERSET ENTERTAINMENT  
LIMITED PARTNERSHIP  
by its General Partner  
Somerset Entertainment GP Inc.**

Per: \_\_\_\_\_  
Authorized Signatory