EXTENDIBLE REVOLVING CREDIT FACILITIES

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

among

BLACK DIAMOND LIMITED PARTNERSHIP,

as Borrower

BLACK DIAMOND GROUP LIMITED,

and certain other guarantors from time to time party hereto
as Guarantors

and

BANK OF MONTREAL, HSBC BANK CANADA

and those other banks and financial institutions
from time to time party hereto,
as Lenders

and

BANK OF MONTREAL,

as Agent for the Lenders and the Hedge Providers

DATED AS OF DECEMBER 31, 2009

THIS AMENDED AND RESTATED CREDIT AGREEMENT is made as of the 31st day of December, 2009

AMONG:

BLACK DIAMOND LIMITED PARTNERSHIP,
as Borrower

- and -

BANK OF MONTREAL, HSBC BANK CANADA
and those other banks and financial institutions
from time to time party hereto,
as Lenders

- and -

BLACK DIAMOND GROUP LIMITED,
and certain other guarantors from time to time party hereto
as Guarantors

-and -

BANK OF MONTREAL,
as Agent for the Lenders and the Hedge Providers

WHEREAS:

A. The Borrower, the Lenders and the Agent entered into an amended and restated credit agreement dated as of August 14, 2009 (the "**Original Credit Agreement**") pursuant to which the Lenders made available to the Borrower certain credit facilities; and;

B. The Borrower, the Agent and the Lenders wish to enter into this Agreement in order to amend and restate the Original Credit Agreement as a result of, *inter alia*, the Arrangement, on and subject to the terms and conditions of this Agreement for the purposes set forth herein.

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

ARTICLE I
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and the Schedules hereto and in all notices given pursuant to this Agreement, the words and phrases set out in the CBA Model Provisions (as defined below) shall have the respective meanings set forth therein, and the following words and phrases shall have the following meanings:

"**137Co**" means 1373901 Alberta Ltd., a corporation incorporated under the laws of Alberta.

"**ABCA**" means the Business Corporations Act (Alberta), including the regulations promulgated thereunder, as the same may be amended from time to time.

"**Acceleration Notice**" means a written notice delivered by the Agent to the Borrower pursuant to Section 10.2 declaring the Obligations to be due and payable.

"**Acquisition**" means, at any time, an acquisition (including an acquisition which comprises of a number of transactions) by any Loan Party of Securities in any Person or of any Properties of any Person which in aggregate would constitute all or substantially all of the assets of a business as a going concern, in each case which is in respect of Securities in any Person or of any Properties that a Loan Party continues to own.

"**Advance**" means a borrowing by the Borrower pursuant to this Agreement, including for greater certainty, by way of a Prime Rate Advance, U.S. Base Rate Advance, MasterCard Advance, Overdraft, acceptance of a Bankers' Acceptance, a BA Equivalent Loan or the issuance of a Letter of Credit, including deemed Advances and Conversions, renewals and Rollovers of existing Advances, and any reference relating to the amount of Advances shall mean the aggregate sum of the principal amount of all outstanding Prime Rate Advances, MasterCard Advances and Overdrafts in Cdn Dollars, plus the Canadian Dollar Equivalent Amount of the principal amount of all outstanding U.S. Base Rate Advances, plus the Face Amount of all outstanding Bankers' Acceptances and Notional Bankers' Acceptances and the Canadian Dollar Equivalent Amount of the stated amount of all Letters of Credit.

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

"**Agent**" means BMO in its capacity as administration agent and syndication agent for the Lenders and the Hedge Providers, and its successors in such capacity.

"**Agent's Account**" means the account of the Borrower maintained at the Agent's main branch or office in Toronto, Ontario.

"**Agreeing Lender**" has the meaning ascribed thereto in Section 4.1(b).

"**Agreement**" means this second amended and restated credit agreement and any schedules hereto, as amended, supplemented, modified, restated or replaced, from time to time.

"**Applicable Lenders**" means, in the context of any specific Facility, all Lenders who have a Proportionate Share of any such Facility.

"**Applicable Margin**" means, at any time, the percentage margin or rate per annum as set forth in the applicable table below for the Operating Facility and the Capex Facility:

Type of Accommodation	Total Funded Debt to EBITDA Ratio			
	Level I	Level II	Level III	Level IV
Prime Rate / U.S. Base Rate	[redacted]	[redacted]	[redacted]	[redacted]
BA Rate	[redacted]	[redacted]	[redacted]	[redacted]
LC Rate	[redacted]	[redacted]	[redacted]	[redacted]
Standby Fee Rate	[redacted]	[redacted]	[redacted]	[redacted]

The Applicable Margin for all Facilities shall: (i) initially be set at Level II as of the date hereof; and (ii) thereafter be recalculated and reset based on the quarterly consolidated Financial Statements of BD Limited.

For the purposes of this definition, the Total Funded Debt to EBITDA Ratio shall be calculated by the Borrower and reported to the Agent in the Compliance Certificate provided by the Borrower from time to time in respect of the applicable Fiscal Quarter end or Fiscal Year end in accordance with Section 9.4(d). The Lenders shall be entitled to rely on such calculation, and the Applicable Margin so determined shall be applied from and after the first day of the first Fiscal Quarter following the date that the Compliance Certificate was required to be delivered; provided that (i) in the event that the Borrower should fail to provide a Compliance Certificate in respect of the applicable Fiscal Quarter end or Fiscal Year end in accordance with Section 9.4(d) setting out the Total Funded Debt to EBITDA Ratio as and when required, then from and after the first day of the month next following the latest month in which the Borrower was required to have provided such Compliance Certificate, the Applicable Margin in all cases shall automatically be determined as if the Total Funded Debt to EBITDA Ratio was Level IV, and such deemed determination shall be final for all purposes hereof; and (ii) the Lenders shall be entitled to disagree with the Borrower's calculation from time to time and in the event of any discrepancy in calculating such ratio as between the Borrower, on the one hand, and the Lenders, on the other hand, the Lenders shall have the right to reassess and redetermine such ratio in their absolute discretion, acting reasonably.

"**Arrangement**" means the transactions resulting in the conversion of the Income Fund and the Commercial Trust into BD Limited, pursuant to the Arrangement Agreement, the Plan of Arrangement and the ABCA, as more particularly detailed in the Information Circular.

"**Arrangement Agreement**" means the arrangement agreement between the Income Fund and Black Diamond Limited dated November 11, 2009 regarding the Arrangement.

"**Available Cash Flow**" means, for the applicable period, EBITDA less:

(a) unfunded Capital Expenditures; and

(b) cash income taxes payable in such period.

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

"**BA Discount Proceeds**" means:

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

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

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

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

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

(b) in respect of any Bankers' Acceptance which is not required to be purchased by a Lender hereunder, the net cash proceeds to the Borrower from such Bankers' Acceptance, before deduction or payment of the BA Fee thereon.

"**BA Discount Rate**" means:

(a) with respect to Bankers' Acceptances accepted by a BA Lender that is a bank under Schedule I of the *Bank Act* (Canada), the CDOR Rate; and

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

"**BA Equivalent Loan**" has the meaning ascribed thereto in Section 2.18.

"**BA Fee**" means the amount calculated by multiplying the Face Amount of a Bankers' Acceptance by the applicable BA Rate, and then multiplying the result by a fraction, the numerator of which is the number of days to elapse from and including the date of acceptance of such Bankers' Acceptance by a BA Lender up to but excluding the maturity date of such Bankers' Acceptance, and the denominator of which is 365 or 366, as applicable.

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

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

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

"**BDESI**" means Black Diamond Energy Services Inc., a corporation incorporated under the laws of Delaware.

"**BDGI**" means Black Diamond Group Inc., a corporation incorporated under the laws of Alberta.

"**BDLI**" means Black Diamond Leasing Inc., a corporation incorporated under the laws of Alberta.

"**BDLP**" means Black Diamond Limited Partnership, a limited partnership formed under the laws of Alberta, of which BDGI is the general partner.

"**BD Limited**" mean Black Diamond Group Limited, a corporation incorporated under the laws of Alberta.

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

"**Book Value**" means the valuation at which assets are described on the Financial Statements, all in accordance with GAAP.

"**Borrower**" means BDLP.

"**Borrower's Account**" means the account of the Borrower maintained at BMO's main branch or office in Calgary, Alberta.

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

"**Boxx**" means Boxx Modular Inc., a corporation incorporated under the laws of Delaware.

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

"**Business**" means the oilfield, industrial and urban service businesses of the Loan Parties including, without limitation, supply of modular site accommodation in remote areas (which includes support services such as engineering and design, transportation, logistics, installation, site services and ongoing maintenance), temporary workspaces and mobile storage (which include offices, lunchrooms, lavatories, portable storage, multi-unit complexes, furniture and office equipment), and rentals and related services needed for drilling, completions, production and facility construction (which include but are not limited to 5, 6, and 8 unit drill camps, 6 and 8 person wet sleepers, 400 barrel tanks, flare tanks, shale bins, floc tanks, rig matting, cement rings and water storage units).

"**Business Day**" means a day of the year, other than a Saturday, Sunday or statutory holiday, on which each Lender is open for business at its main branch or office in Calgary, Alberta and Toronto, Ontario.

"**Canadian Dollars**", "**Cdn Dollars**", "**Cdn$**" or "**$**" mean lawful money of Canada.

"**Capex Borrowing Base**" means [redacted] of the net Book Value of the Consolidated Net Tangible Capital Assets over which the Agent has a first priority Security Interest.

"**Capex Borrowing Base Certificate**" means a certificate of a Responsible Officer of the General Partner of the Borrower required from time to time pursuant to Section 9.4(e), the form of which is attached hereto as Schedule "G".

"**Capex Facility**" means the extendible revolving loan facility more particularly described in Section 2.5.

"**Capex Facility Commitment**" means the Commitment of the Capex Lenders in respect of the Capex Facility as set out in Schedule "A" attached hereto, as such Schedule may hereafter be amended from time to time, and as such Commitment shall reduce according to the provisions of Section 3.4.

"Capex Facility Maturity Date" means the earliest to occur of (i) December 31, 2011, as the same date may be extended from time to time pursuant to Section 4.1, and on which all Outstanding Principal and accrued interest under the Capex Facility is due without the giving of an Acceleration Notice or (ii) that due date of all Obligations under the Capex Facility resulting from the giving of an Acceleration Notice.

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

"Capex Facility Limit" means, at any time, <u>the lesser of</u>:

(a) the Capex Facility Commitment, and

(b) the Capex Borrowing Base at that time.

"Capex Reduction Amount" has the meaning ascribed thereto in Section 3.4(b).

"Capex Facility Term-Out Date" means January 1, 2011, as the same may be extended from time to time pursuant to Section 4.1, <u>provided</u> that the Capex Facility Term-Out Date shall occur on or before the Capex Facility Maturity Date.

"Capex Facility U.S. Sub-Limit" means, at any time, <u>the lesser of</u>:

(a) Cdn. [redacted] or the U.S. Dollar Equivalent thereof; and

(b) the Capex Borrowing Base at that time.

"Capital Assets" means Property that would, in accordance with GAAP, be determined to be capital Property and equipment.

"Capital Expenditures" means expenditures made directly or indirectly which are considered in accordance with GAAP to be classified and accounted for as capital expenditures, including the acquisition or improvement of land, buildings, plant, machinery or equipment, whether fixed or removable.

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

"CBA Model Provisions" means the model credit agreement provisions attached hereto as Schedule "H", which have been revised under the direction of the Canadian Bankers' Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc.

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

"**Collateral**" means all property, assets and undertaking of the Loan Parties or any other Person encumbered by the Security; together with all proceeds thereof.

"**Commercial Trust**" means Black Diamond Commercial Trust, an unincorporated, open-ended investment trust settled under the laws of Alberta.

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

"**Common Share**" means a common share of BD Limited.

"**Compliance Certificate**" means a certificate of a Responsible Officer of the General Partner of the Borrower required from time to time pursuant to Section 9.4(d), the form of which is attached hereto as Schedule "B".

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

"**Consolidated Net Current Liabilities**" means, in respect of BD Limited at the end of a Fiscal Quarter and as determined in accordance with GAAP on a consolidated basis, the aggregate amount shown as current liabilities in the Financial Statements for such period, <u>excluding</u> the current portion of Long-Term Debt.

"**Consolidated Net Tangible Capital Assets**" means the total Capital Assets of BD Limited (net of depreciation and amortization), less, to the extent included, the value attributed to intangible assets (including without limitation, goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs, deferred charges and other similar intangible assets) and less, to the extent included, the value attributed to non-revenue-generating assets (including without limitation computer hardware, computer software, and furniture), as determined on a consolidated basis, in accordance with GAAP.

"**Constating Documents**" means (i) with respect to a corporation, its articles of incorporation, amalgamation or continuance or other similar documents and its by-laws, and (ii) with respect to any other Person which is not a natural Person, the organization and governance documents of such Person; in each case as amended, supplemented, restated or replaced from time to time.

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

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

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

"**Counterparty**" means a party to a Permitted Lender Hedge, other than the Borrower.

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

"**Creditor Proceedings**" means any dissolution, winding up, total or partial liquidation, plan of arrangement, receivership, insolvency, proposal, bankruptcy or compromise under the Insolvency Legislation, including a reorganization under section 192 of the ABCA or the equivalent provisions of any other applicable corporate law, general assignment for the benefit of creditors or similar proceedings offered with respect to any Loan Party, or their respective properties or liabilities.

"**Currency Exchange Hedge Agreement**" means any transaction, arrangement or agreement entered into between the Borrower and a counterparty, on a case by case basis, including a foreign exchange futures contract, a currency option, a currency swap, a currency exchange, a forward rate or other similar currency-related transaction, the purpose of which is to manage, mitigate or eliminate the Borrower's exposure to fluctuations in currency exchange rates, whether in the form of an ISDA Master Agreement or otherwise.

"**Current Ratio**" means, in respect of BD Limited at the end of a Fiscal Quarter and as determined in accordance with GAAP on a consolidated basis, the ratio of (i) Consolidated Current Assets, plus accrued current payables incurred in the ordinary course of acquiring long term Capital Assets, provided that the amount of such accrued current payables so added thereto shall not exceed the undrawn portion of the Capex Facility Limit, to (ii) Consolidated Net Current Liabilities.

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

"**Debt**" means, in respect of any Person, all obligations, liabilities and indebtedness which would, in accordance with GAAP, be classified on a consolidated balance sheet as liabilities and, whether or not so classified, shall include (without duplication and on a consolidated basis):

(a) money borrowed (including by way of Overdraft) or Indebtedness represented by notes payable and drafts accepted representing extensions of credit for borrowed money;

(b) the face amount of bankers' acceptances and similar instruments not relating to the Facilities;

(c) the stated amount of all letters of credit, letters of guarantee and surety bonds, in each case supporting amounts which would otherwise constitute Debt within the meaning of this definition;

(d) all obligations (whether or not with respect to the borrowing of money) that are evidenced by bonds, debentures, notes or other similar instruments;

(e) all obligations upon which interest charges are customarily paid or payable prior to payment of the principal amount of such obligations in accordance with the terms of such obligations;

(f) all obligations for or in respect of the purchase of any Property from such Person, where the purchase price for such Property has been prepaid by the purchaser;

(g) all obligations in respect of the deferred purchase or acquisition price of property or services, including without limitation, obligations secured by any Permitted PMSIs;

(h) all principal obligations as lessee under sale and leaseback transactions and Capital Leases or any other leases which would in accordance with GAAP be construed as financing leases;

(i) any Indebtedness with respect to vendor-take back, subordinated, postponed or mezzanine loan facilities;

(j) all redemption obligations with respect to any Securities which are by their terms or pursuant to any agreement or arrangement (i) redeemable, retractable, payable or required to be purchased or otherwise retired or extinguished, or convertible into debt of such Person, (A) at a fixed or determinable date, (B) at the option of any holder thereof, or (C) upon the occurrence of a condition not solely within the control and discretion of such Person, or convertible into any other Securities described in (i) above; and

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

but excluding, for greater certainty, trade payables and accrued liabilities that are current liabilities incurred in the ordinary course of business, and future taxes.

"Debt Service" means, with respect to BD Limited on a consolidated basis for any period, all amounts required to be paid during such period in respect of Debt, including without limitation, repayments of principal, Interest Expense and fees.

"Decision Date" has the meaning ascribed thereto in Section 4.1(a).

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

"Dene LP" means Black Diamond Dene Limited Partnership, a limited partnership formed under the laws of the Province of British Columbia pursuant to the Dene LP Agreement.

"Dene LP Agreement" means the September 28, 2009 limited partnership agreement of the Black Diamond Dene Limited Partnership among the Borrower, Fort Nelson First Nation and BDGI.

"Designated New Equity" means the net proceeds of any Common Share offering by BD Limited, including, without limitation, by way of exercise of options or warrants or pursuant to a dividend reinvestment plan, which Designated New Equity shall be certified by a Responsible Officer of the General Partner of the Borrower quarterly in each Compliance Certificate.

"Disposition" means, at any time, a disposition (including a disposition which comprises of a number of transactions) of the Securities in any Loan Party of or the Properties of any Loan Party which in aggregate would constitute all or substantially all of the assets of a business, in each case which is completed in the immediately preceding twelve months.

"Distribution" means:

(a) to any holder of Securities of BD Limited or on or in respect of any of its Securities or other legal or beneficial interests in respect of BD Limited, as the case may be;

(b) any declaration or payment of dividends, royalties, distributions, fees or management fees (other than fees or management fees payable in the ordinary course of business) of any kind directly or indirectly to any holder of Securities of any Person otherwise having the right or ability directly or indirectly to vote for the election of directors of a corporation or the management or operation of a partnership or other Person;

(c) any repurchase, retraction, redemption or other retirement of Securities in respect of any Loan Party;

(d) any repayment by any Loan Party of any amount of principal, interest or other amounts in respect of any funded debt owed to any Affiliate of such Loan Party;

(e) any loan or advance that is made by a Person to or in favour of a holder of shares in such Person or an Affiliate of such holder; or

(f) the transfer by a Person of any of its property or assets for consideration of less than fair market value thereof, to any of its Affiliates (other than a Loan Party).

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

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

"EBITDA" means, with respect to BD Limited for any period, the consolidated net income of BD Limited for such period determined in accordance with GAAP (excluding non-cash income and expenses, Securities-based compensation, and extraordinary items and expenses), plus, to the extent deducted in determining such net income, the following:

(a) income taxes;

(b) Interest Expenses; and

(c) depreciation and amortization expenses,

provided that when EBITDA is required to be determined for any four quarterly periods, consolidated EBITDA shall be adjusted as deemed appropriate by the Agent to: (i) include EBITDA associated with any Acquisition made within the applicable four quarterly periods, as if such Acquisition had been made at the beginning of the first of such four quarterly periods; and (ii) exclude EBITDA associated with any Disposition made within the applicable four quarterly periods, as if such Disposition had been made at the beginning of the first of such four quarterly periods.

"Effective Date" has the meaning ascribed thereto in Section 7.1.

"Eligible Accounts Receivable" means, at any time with respect to any account debtor, the invoice amount of an account receivable, net of all goods and services tax, harmonized sales taxes and other sales taxes, owing by such account debtor (net of any credit balance, returns, trade discounts, unapplied cash, unbilled amounts or finance charges) to a Loan Party; provided that no account receivable shall be deemed an Eligible Account

Receivable unless each of the following statements is accurate and complete (and by including such account receivable in any calculation of the Operating Facility Limit, the Borrower shall be deemed to represent and warrant to the Lenders the accuracy and completeness of such statements):

(a) the account arises from a *bona fide*, fully-completed transaction consisting of either the sale of goods or the performance of services by a Loan Party in the ordinary course of business for an account debtor domiciled in Canada, and an invoice relating thereto has been issued and sent to the account debtor;

(b) the account debtor is not another Loan Party, a Related Party or a non-arm's length party;

(c) the account is subject to a first-ranking Security Interest held by the Agent pursuant to the Security, and is not subject to any other Security Interest (including any purchase money security interest) capable of ranking in priority to the Agent's Security;

(d) the account is a valid, legally enforceable and unconditional obligation of the account debtor, the account is not doubtful or in dispute, and the account debtor has not asserted any defence, holdback, counterclaim or claim for credit, set-off, allowance or adjustment;

(e) there is no obligation to hold any portion of the account in trust or as agent for any other Person (except pursuant to a Statutory Lien not at the time overdue);

(f) the account is not outstanding for more than 60 days from invoice date (assuming standard terms of 30 days); for greater certainty, the entire portion of any such account outstanding for more than 60 days from invoice date shall be excluded unless (i) the Lenders designate the under 60-day portion as being nevertheless good and (ii) construction account holdbacks (to the extent of the holdback portion) are not to be included for purposes of calculating the over 90-day period;

(g) the account debtor is not, to the knowledge of the Borrower, insolvent or subject to any proceeding under Insolvency Legislation; and

(h) the Agent has not notified the Borrower that, in the opinion of the Lenders acting reasonably, the account is subject to undue credit risk or is otherwise ineligible.

"**Eligible U.S. Accounts Receivable**" means, at any time with respect to any account debtor, the invoice amount of an account receivable, net of all goods and services tax, harmonized sales taxes and other sales taxes, owing by such account debtor (net of any credit balance, returns, trade discounts, unapplied cash, unbilled amounts or finance charges) to a Loan Party; provided that no account receivable shall be deemed an Eligible U.S. Account Receivable unless each of the following statements is accurate and complete (and by including such account receivable in any calculation of the Operating Facility Limit, the Borrower shall be deemed to represent and warrant to the Lenders the accuracy and completeness of such statements):

(a) the account arises from a *bona fide*, fully-completed transaction consisting of either the sale of goods or the performance of services by a Loan Party in the ordinary course of business for an account debtor domiciled in the United States of America, and an invoice relating thereto has been issued and sent to the account debtor;

(b) the account debtor is not another Loan Party, a Related Party or a non-arm's length party;

(c) the account is subject to a first-ranking Security Interest held by the Agent pursuant to the Security, and is not subject to any other Security Interest (including any purchase money security interest) capable of ranking in priority to the Agent's Security;

(d) the account is a valid, legally enforceable and unconditional obligation of the account debtor, the account is not doubtful or in dispute, and the account debtor has not asserted any defence, holdback, counterclaim or claim for credit, set-off, allowance or adjustment;

(e) there is no obligation to hold any portion of the account in trust or as agent for any other Person (except pursuant to a Statutory Lien not at the time overdue);

(f) the account is not outstanding for more than 60 days from invoice date (assuming standard terms of 30 days); for greater certainty, the entire portion of any such account outstanding for more than 60 days from invoice date shall be excluded unless (i) the Lenders designate the under 60-day portion as being nevertheless good and (ii) construction account holdbacks (to the extent of the holdback portion) are not to be included for purposes of calculating the over 90-day period;

(g) the account debtor is not, to the knowledge of the Borrower, insolvent or subject to any proceeding under Insolvency Legislation; and

(h) the Agent has not notified the Borrower that, in the opinion of the Lenders acting reasonably, the account is subject to undue credit risk or is otherwise ineligible.

"Enforcement Notice" has the meaning ascribed thereto in Section 10.4.

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

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

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

"Event of Default" means any of the events or circumstances specified in Section 10.1.

"Excess Cash Flow" means Available Cash Flow less Debt Service.

"Existing Capex Facility Advances" means the revolving loan advances made by the Capex Lenders to the Borrower under the Original Credit Agreement.

"Existing Operating Facility Advances" means the revolving loan advances made by the Operating Lenders to the Borrower under the Original Credit Agreement.

"**Existing Swingline Facility Advances**" means the revolving loan advances made by the Swingline Lender to the Borrower under the Original Credit Agreement.

"**Extendible Period**" means: (i) in respect of the Operating Facility, the period commencing on the Effective Date and ending at 2:30 p.m. (Calgary time) on the Operating Facility Maturity Date, or such later date to which the Operating Facility Maturity Date may be extended from time to time under Section 4.1; and (ii) in respect of Capex Facility, the period commencing on the Effective Date and ending at 2:30 p.m. (Calgary time) on the Capex Facility Term-Out Date, or such later date to which the Capex Facility Term-Out Date may be extended from time to time under Section 4.1.

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

"**Facilities**" means the Operating Facility and the Capex Facility, and "**Facility**" means any one of such Facilities as the context requires.

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

"**Financial Covenants**" means the financial covenants set out in Section 9.2.

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

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

"**Fiscal Year**" means, in respect of any Loan Party, its fiscal year commencing on January 1 of any year and ending on December 31 of such following year.

"**Fixed Charge Coverage Ratio**" means at any time, in respect of BD Limited on a consolidated basis, the ratio of: (i) EBITDA <u>minus</u> (A) cash income taxes and (B) Unfinanced Capital Expenditures (for the most recently completed four Fiscal Quarters), to (ii) the sum of scheduled principal and Interest Expense payments (excluding non-cash interest) paid in respect of any and all funded Debt (excluding any bullet payments and cash flow sweeps), Capital Lease payments, and Distributions (in each case, for the most recently completed four Fiscal Quarters); provided that, for the purposes of this definition: (X) EBITDA shall not include EBITDA associated with any Acquisition until such Acquisition has been completed, and provided that, when EBITDA is required to be determined for any four quarterly periods, consolidated EBITDA shall not be adjusted to include EBITDA associated with any Acquisition made within the applicable four quarterly periods as if such Acquisition had been made at the beginning of the first of such four quarterly periods; and (Y) EBITDA shall include EBITDA associated with any Disposition until such Disposition has been completed, and provided that, when EBITDA is required to be determined for any four quarterly periods, consolidated EBITDA shall not be adjusted to exclude EBITDA associated with Disposition made within the applicable four quarterly periods as if such Disposition had been made at the beginning of the first of such four quarterly periods.

"Funded Acquisition" means any Acquisition whereunder any Advances under the Capex Facility are to be utilized to complete such Acquisition.

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

"General Partner" means BDGI, in its capacity as general partner of the Borrower.

"Government Authorization" means an authorization, consent, approval, waiver, order, decree, licence, exemption, permit, registration, filing, qualification or declaration of or with any Governmental Authority or an obligation under Applicable Laws to give notice to any Governmental Authority.

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

"Guarantor" means BD Limited, each Subsidiary, Partner or other Person which has provided to the Agent the following (in each case in form and substance satisfactory to the Agent, acting reasonably):

(a) a guarantee, pursuant to which such Guarantor guarantees to the Agent, the Lenders and the Hedge Providers, the payment and performance of all present and future indebtedness, liabilities and obligations of the Borrower to the Agent, the Lenders and the Hedge Providers, direct or indirect, absolute or contingent, joint or several, matured or unmatured, arising out of, under, in respect of or in connection with the Credit Documents;

(b) a security agreement pursuant to which such Guarantor grants to the Agent, the Lenders and the Hedge Providers a Security Interest over all of such Guarantor's present and after-acquired real and personal property, assets and undertakings; and

(c) such other certificates, documents and legal opinions that the Agent may require, acting reasonably,

which, as of the date hereof, have been granted by BDGI, 137Co, BDESI and Boxx, which shall be granted by BD Limited in accordance with Section 7.1(b) hereof and which shall be granted by Nortex in accordance with Section 7.2 hereof.

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

"Hedge Agreement" means any Currency Exchange Hedge Agreement, any Interest Rate Hedge Agreement, or any other present and future agreement, a futures contract, a swap transaction, an option, a cap transaction, floor transaction, collar transaction or otherwise, typically entered into for managing, mitigating or eliminating risk, whether in the form of an ISDA Master Agreement or otherwise.

"Hedge Agreement Obligations" means all present and future indebtedness, liabilities and obligations (including without limitation contingent obligations and liabilities and liability) of the Borrower or any other Loan Party arising under any Hedge Agreement entered into by the Borrower or any Loan Party.

"Hedge Provider" means a Lender or an Affiliate of a Lender that enters into a Permitted Lender Hedge with the Borrower. For greater certainty, if a Permitted Lender Hedge is entered into by a Person at a time such Person is a Lender or an Affiliate of a Lender, such Person continues to be a Hedge Provider if the Person (or its Affiliate) ceases to be a "Lender" hereunder.

"Hostile Acquisition" means an unsolicited Acquisition of the Securities of any Person that are publicly traded, or otherwise to facilitate, assist or participate in an Acquisition of the Securities of any Person that are publicly traded, where the board of directors or the equivalent of such Person has not approved such Acquisition nor recommended the approval of such Acquisition to the holders of such Securities.

"HSBC" means HSBC Bank Canada.

"Income Fund" means Black Diamond Income Fund, an unincorporated, open-ended trust settled under the laws of Alberta.

"Income Fund Unit" means a unit of the Income Fund.

"Indemnitees" means the Lenders, the Agent and their respective successors and assignees, any agent of any of them (specifically including a receiver or receiver-manager) and the respective officers, directors and employees of the foregoing.

"Indebtedness" means, with respect to any Person, all present and future indebtedness, liabilities and obligations created, incurred, assumed or guaranteed by such Person, whether absolute or contingent including all indebtedness for borrowed money, any obligation arising in respect of any Hedge Agreement or similar obligation and all liabilities (other than indebtedness for borrowed money) which in accordance with GAAP would appear on the liability side of a balance sheet of such Person prepared as at such time, except items of capital, retained earnings, surplus or deferred tax reserves.

"Information Circular" means the November 12, 2009 notice of special meeting of unitholders of the Income Fund to be held December 17, 2009 and notice of petition to the Court of Queen's Bench of Alberta and information circular and proxy statement with respect to the Plan of Arrangement.

"Insolvency Default" means an Event of Default described in Sections 10.1(e) or (f).

"Insolvency Legislation" means legislation in any applicable jurisdiction relating to reorganization, compromise or re-adjustment of debt, dissolution or winding-up, or any similar legislation, and specifically includes for greater certainty, the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-Up and Restructuring Act* (Canada) and any applicable corporations or company legislation.

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

(a) all cash interest paid or payable in respect of such period;

(b) all fees (including standby, letter of credit, guarantee, commitment and BA Fees) accrued or payable in respect of such period and which relate to any Debt, prorated (as required) over such period;

(c) any difference between the face amount and the discount proceeds of any bankers' acceptances issued by such Person and other obligations issued at a discount, prorated (as required) over such period;

(d) the interest component of Capital Lease obligations and any other financing lease obligations (whether a synthetic lease or otherwise and whether categorized as a true lease or a financing lease for income tax purposes) accrued or payable in respect of such period; and

(e) all net amounts charged or credited to interest expense in respect of such period under any Interest Rate Hedge Agreement.

"Interest Payment Date" means, with respect to Prime Rate Advances and U.S. Base Rate Advances under the Operating Facility and the Capex Facility, the last Business Day of each calendar month.

"Interest Rate Hedge Agreement" means any transaction, arrangement or agreement entered into between the Borrower and a counterparty, on a case by case basis, including a futures contract, an interest rate swap, an interest rate option, a cap transaction, a floor transaction, a collar transaction or other similar interest-related transaction, the purpose of which is to manage, mitigate or eliminate the Borrower's exposure to fluctuations in interest rates, whether in the form of an ISDA Master Agreement or otherwise.

"ISDA Master Agreement" means the 1992 ISDA Master Agreement (Multi-Currency – Cross Border) or the 2002 ISDA Master Agreement, each as published by the International Swaps and Derivatives Association, Inc., each as amended or replaced from time to time and, where the context permits or requires, includes all schedules, supplements, annexes and confirmations attached thereto or incorporated therein, including without limitation, any Credit Support Annex.

"Issuing Bank" means the Agent.

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

"Lenders" means BMO, HSBC and any other banks and financial institutions who from time to time become party to this Agreement as a Person having a Commitment hereunder, and each of their respective successors and assigns, and **"Lender"** means any one of them.

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

"Letter of Credit" means a documentary letter of credit, standby letter of credit or letter of guarantee (in a form acceptable to the Swingline Lender or the Issuing Bank, as the case may be, issuing such letter of credit or letter of guarantee) in: (i) Canadian Dollars, if issued by the Swingline Lender or (ii) all major currencies then offered by the Issuing Bank, if issued by the Issuing Bank; and for greater certainty includes a Syndicated Letter of Credit;

"Letter of Credit Advance" means an Advance under Tranche O-1 by the issuance of Letters of Credit by the Issuing Bank, an Advance under the Swingline Facility by the issuance of Letters of Credit by the Swingline Lender, or an Advance under the Capex Facility by the issuance of Letters of Credit by the Issuing Bank, in all cases pursuant to this Agreement at the request and for the account of the Borrower.

"Letter of Credit Documentation" has the meaning ascribed thereto in Section 2.13 or Section 2.14, as applicable.

"Level I", **"Level II"**, **"Level III"** and **"Level IV"** mean, respectively, the level corresponding to the Total Funded Debt to EBITDA Ratio as set forth in the table below:

Total Funded Debt to EBITDA Ratio	Level
Less than or equal to [redacted]	[redacted]
Greater than [redacted] but less than or equal to [redacted]	[redacted]
Greater than [redacted] but less than or equal to [redacted]	[redacted]
Greater than [redacted] but less than or equal to [redacted]	[redacted]

"Loan Parties" means, collectively, the Borrower, BD Limited, the Partners and the Material Subsidiaries and all other Guarantors, and **"Loan Party"** means any one of them.

"Long-Term Debt" means, at any particular time and in respect of the Loan Parties, Indebtedness which does not mature within one year.

"MasterCard Advance" has the meaning ascribed thereto in Section 2.4(h).

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

(a) the business, financial condition, operations, property, assets or undertaking of the Loan Parties (taken as a whole);

(b) the ability of the Loan Parties to perform their respective obligations under any Credit Documents to which each is a party;

(c) the ability of the Borrower to pay and perform its Obligations in accordance with this Agreement;

(d) the validity or enforceability of this Agreement or any other Credit Document;

(e) the rights and remedies of the Lenders, the Hedge Providers and the Agent under the Credit Documents; or

(f) the priority ranking of any of the Security Interests granted by the Security or the rights or remedies intended or purported to be granted to the Agent, the Lenders and the Hedge Providers under or pursuant to the Security.

"Material Leases" means such leases or other agreements with respect to Capital Assets (other than intangible assets, including without limitation, goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs, deferred charges and other similar intangible assets) entered into or assumed by a Loan Party from time to time, as lessor or in a similar capacity, and each with a value greater than $5,000,000 attributable to lease or rental revenue over the term of such lease or agreement.

"**Material Subsidiary**" means, at any time, any Subsidiary, other than the Borrower or Dene LP, of any Loan Party, whose total assets (excluding inter-company accounts) constitute more than 5% of the consolidated total assets of BD Limited, whose total revenue (calculated on its preceding consecutive four Fiscal Quarter period and excluding inter-company accounts) constitutes more than [redacted] of the consolidated revenue of BD Limited for the then preceding consecutive four Fiscal Quarter period, or who has been designated as a Material Subsidiary by BD Limited, or who has provided a Subsidiary Guarantee and Security to the Agent, including, without limiting the generality of the foregoing, BDGI, 137Co, BDESI and Boxx and, in accordance with Section 7.2, shall include Nortex.

"**Maturity Date**" means the Operating Facility Maturity Date or the Capex Facility Maturity Date, as the context requires, and "**Maturity Dates**" shall have the meaning ascribed thereto in Section 4.1(a)(i).

"**Minor Acquisition**" means an Acquisition, other than a Funded Acquisition, which when completed, would not result in: (a) the target of such Acquisition (each, a "**New Subsidiary**" and collectively, the "**New Subsidiaries**") being a Material Subsidiary, as defined herein; or (b) the acquisition by a Loan Party of Property with a fair market value in excess of [redacted] of the consolidated total assets of BD Limited.

"**New Maturity Date**" has the meaning ascribed thereto in Section 4.1(a).

"**Non-Agreeing Lender**" has the meaning ascribed thereto in Section 4.1(b).

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

"**Nortex**" means Nortex Modular Leasing and Construction Company, a Texas corporation, the Surviving Corporation (as defined in the Nortex Acquisition Agreement).

"**Nortex Acquisition Agreement**" means the agreement and plan of merger by and among BD Limited, Nortex Acquisition Company, Nortex Modular Leasing and Construction Company, Sherry Stewart and Jim Attrell, individually and as representatives, the Lucas Attrell Irrevocable Trust and the Melissa Attrell Irrevocable Trust dated December 30, 2009 regarding the Nortex Acquisition.

"**Nortex Acquisition**" means the transactions more particularly described in the Nortex Acquisition Agreement whereunder, among other things, Nortex Acquisition Company shall acquire all of the issued and outstanding Securities of Nortex Modular Leasing and Construction Company, a predecessor by merger to Nortex.

"**Notification Date**" has the meaning ascribed thereto in Section 4.1(a).

"**Notional Bankers' Acceptances**" has the meaning ascribed thereto in Section 2.18(b).

"**Obligations**" means, at any time without duplication, all of the present and future Indebtedness, direct or indirect, absolute or contingent, matured or unmatured of the Loan Parties owing to any of the Agent and the Lenders under, pursuant to or in connection with this Agreement and the other Credit Documents, including without limitation Permitted Lender Hedge Obligations and all principal, interest, fees, indemnities, costs and expenses thereunder, plus any obligations under Service Agreements at such time.

"**Offer of Extension**" means a written offer by the Agent, on behalf of the Agreeing Lenders, to the Borrower to extend the Operating Facility Maturity Date to a date (as designated by the Borrower) up to 364 days after the then current Operating Facility Maturity Date in respect of the Operating Facility, and/or to extend the Capex Facility Term-Out Date to a date (as designated by the Borrower) up to 364 days after the then current Capex Facility Term-Out Date in respect of the Capex Facility, and setting forth the terms and conditions on which any such extension is being offered by the Applicable Lenders.

"Operating Facility" means the extendible revolving loan facility more particularly described in Section 2.1.

"Operating Facility Borrowing Base" means the aggregate of the following, without duplication:

(a) [redacted] of the value of all Eligible Accounts Receivable, calculated monthly,

(b) plus, [redacted]% of the value of all Eligible U.S. Accounts Receivable, calculated monthly,

(c) minus, without duplication and only to the extent that the following are included in Eligible Accounts Receivable or Eligible U.S. Accounts Receivable, manufacturers' rebates, future dated receivables, contra accounts and overdue statutory or priority payables, calculated monthly.

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

"Operating Facility Limit" means, at any time, the lesser of:

(a) the Operating Facility Commitment, and

(b) Operating Facility Borrowing Base.

"Operating Facility Maturity Date" means the earliest to occur of (i) December 31, 2011, as the same date may be extended from time to time pursuant to Section 4.1, and on which the Outstanding Principal and accrued interest under the Operating Facility is due without the giving of an Acceleration Notice, or (ii) that due date of all Obligations under the Operating Facility resulting from the giving of an Acceleration Notice.

"Operating Facility U.S. Sub-Limit" means Cdn. [redacted] or the U.S. Dollar Equivalent thereof.

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

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

"Original Credit Agreement" has the meaning ascribed thereto in the recitals hereto.

"Outstanding Principal" means, at any time in relation to the Facilities (or if the context requires, under any Facility or any Tranche), the aggregate at such time of: (a) the principal amounts outstanding of all Prime Rate Advances; (b) the Canadian Dollar Equivalent Amount of the principal amounts outstanding of all U.S. Base Rate Advances; (c) the Equivalent Amount in Canadian Dollars of the maximum undrawn amounts in respect of outstanding Letters of Credit; (d) the Face Amount of all outstanding BA Advances and BA Equivalent Loans; and (e) the principal amount outstanding of all MasterCard Advances.

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

"**Partner**" means the General Partner and each limited partner of the Borrower.

"**Partnership Agreement**" means the amended and restated limited partnership agreement dated September 26, 2006 currently among the BDGI as general partner and BD Limited as the holder of the limited partnership units, and each Person who is admitted as an additional limited partner of BDLP from time to time, as further amended, supplemented, restated or replaced from time to time.

"**Permitted Currency Exchange Hedge Agreement**" means a Currency Exchange Hedge Agreement that:

(a) is entered by the Borrower into for the purposes of hedging and mitigating the risk of fluctuations in currencies, and not for speculative purposes; and

(b) does not have a term that exceeds a period of one year;

provided however, a Currency Exchange Hedge Agreement shall not be considered a "Permitted Currency Exchange Hedge Agreement" if at the time such Currency Exchange Hedge Agreement is entered into, the aggregate notional amount of such Currency Exchange Hedge Agreement and all outstanding Currency Exchange Hedge Agreements to which the Borrower is a party exceeds 75% of the forecasted amount of U.S. Dollar denominated accounts receivable (net of all goods and services tax, harmonized sales taxes and other sales taxes) owing by an account debtor domiciled in the United States of America, for the next four Fiscal Quarters, as reported in the most recently delivered Compliance Certificate.

"**Permitted Disposition**" means, in respect of any Loan Party and subject to the restrictions in Section 9.10:

(a) the sale or other disposition of any Property (including inventory) made in the ordinary course of business,

(b) any sale, trade or other disposition of any tools, implements, equipment or machinery which may have become worn out, unserviceable, obsolete, unsuitable or unnecessary in operations,

(c) the sale or other disposition of any Properties, rights or interests by any Loan Party to another Loan Party, or

(d) any other sale or disposition to which the Required Lenders agree in writing.

"**Permitted Encumbrances**" means, as at any particular time, any of the following encumbrances on the Property or any portion of the Property of any Loan Party:

(a) Statutory Liens in respect of any amount which is not at the time overdue, or which may be overdue but the validity of which is being contested at the time in good faith by appropriate proceedings for amounts in the aggregate not in excess of [redacted]

(b) undetermined or inchoate Security Interests incidental to construction or operations arising in the ordinary course of business, including builder's, carrier's, warehouseman's, mechanic's, operator's or other similar liens, which relate to obligations (i) not due or delinquent and which have not at such time been filed pursuant to law and no other statutory proceedings have been taken to enforce the same, or (ii) being contested at the time in good faith by appropriate proceedings for amounts in the aggregate not in excess of [redacted]

(c) the lien of any judgment rendered, or claim filed, against it after the date hereof which is being contested in good faith by appropriate proceedings if during such contestation there is no risk of forfeiture of any material property either because of (i) a stay of enforcement of such judgment or claim (if enforceable by seizure, sale or other remedy against any property), as the case may be, is in effect, or (ii) the value of the assets affected thereby is less than [redacted]

(d) the lien of any judgment rendered, or claim file, against it prior to the date hereof, as disclosed to and accepted by the Agent and the Lenders;

(e) easements, rights-of-way, servitudes or other similar rights (including rights-of-way and servitudes for railways, sewers, drains, pipe lines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to or reserved or taken by other Persons, and any other minor defects, which either alone or in the aggregate do not materially detract from the value of such land or materially impair its use;

(f) security given to a public utility or any Governmental Authority when required by such public utility or Governmental Authority in the ordinary course of business, provided such security does not either alone or in the aggregate materially detract from the value of the Property affected thereby or materially impair its use;

(g) the right reserved to or vested in any Governmental Authority by the terms of any lease by any statutory provision to terminate any lease or to require payment of royalties as a condition of the continuance thereof;

(h) Security Interests in favour of the Agent, the Lenders and the Hedge Providers pursuant to any of the Credit Documents;

(i) Permitted PMSIs and Security Interests existing on property acquired by a Loan Party at the time of acquisition, provided such Permitted PMSIs and Security Interests do not at any time secure obligations exceeding, in the aggregate, [redacted];

(j) Security Interests securing the performance of bids, tenders, leases, contracts (other than for the repayment of borrowed money), surety and appeal bonds and performance bonds and other obligations of like nature, incurred as an incident to and in the ordinary course of business;

(k) Capital Leases provided that the present value of the obligations of the lessees thereunder, in aggregate and determined in accordance with GAAP, shall not exceed [redacted] any time;

(l) any extension, renewal or replacement (or successive extensions, renewals or replacements), as a whole or in part, of any Security Interest referred to in the preceding paragraphs (a) to (k) inclusive of this definition, so long as any such extension, renewal or replacement of such Security Interest is limited to all or any part of the same property that secured the Security Interest extended, renewed or replaced (plus improvements on such property) and the principal amount of the indebtedness or obligation secured thereby is not increased, without the consent of the Lenders, acting reasonably;

(m) all such other claims and encumbrances as are specifically disclosed by notice in writing to the Agent to the extent that the Agent, acting on instructions from the Required Lenders, by specific notice in writing to the Borrower advising that the Agent agrees to accept such claims and encumbrances as Permitted Encumbrances for the purposes of this Agreement; and

(n) Security Interests granted by the Borrower in the Securities of the Dene LP owned by the Borrower.

"Permitted Indebtedness" means, without duplication:

(a) trade payables of any Loan Party (other than Indebtedness for borrowed money) incurred in the ordinary course of business, provided that such Indebtedness is classified as a current liability on the Financial Statements;

(b) all Indebtedness of any Loan Party to the Agent, the Lenders and the Hedge Providers under this Agreement or under or secured by any Credit Document;

(c) all Indebtedness of the Borrower to a Guarantor, or of a Guarantor to the Borrower, or of a Guarantor to another Guarantor;

(d) all Indebtedness of any Loan Party under Operating Leases, provided that the Indebtedness in aggregate for all Loan Parties under Operating Leases (not including Indebtedness pursuant to leases of real property used by a Loan Party as office space) does not exceed [redacted]

(e) Permitted Subordinated Debt;

(f) all Indebtedness secured by Permitted Encumbrances; and

(g) such other Indebtedness of a Loan Party which the Agent, acting on instructions of the Required Lenders, each acting reasonably, has consented to in writing.

"Permitted Interest Rate Hedge Agreement" means an Interest Rate Hedge Agreement that:

(a) is entered into for the purposes of hedging against and mitigating the risk of fluctuations in interest rates, and not for speculative purposes; and

(b) does not have a term that exceeds a period of five years and three months; and

provided however Interest Hedge Agreements shall not be considered Permitted Interest Rate Hedge Agreements if any time the aggregate notional amount of all outstanding Interest Rate Hedge Agreements to which the Borrower is a party exceeds the Outstanding Principal under the Capex Facility at such time.

"Permitted Lender Hedge" means an Interest Rate Hedge Agreement or a Currency Exchange Hedge Agreement between the Borrower and a Person who, at the time of entering into such Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement, was a Lender or an Affiliate of a Lender.

"Permitted Lender Hedge Obligations" means the Hedge Agreement Obligations to a Hedge Provider pursuant to a Permitted Lender Hedge.

"Permitted PMSI" means a Security Interest created by any Loan Party securing Debt incurred to finance the acquisition of Property, provided that (i) such Security Interest is created substantially simultaneously with the acquisition of such assets, (ii) such Security Interest does not at any time encumber any Property other than the Property financed by such Debt, (iii) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (iv) the principal amount of Debt secured by any such Security Interest at no time exceeds 100% of the original purchase price of such property at the time it was acquired.

"Permitted Subordinated Debt" means with respect to any Loan Party, all indebtedness created, incurred, assumed or guaranteed by any Loan Party and which is owing to a Person or Persons holding Securities in any Loan Party, provided that such indebtedness will only be "Permitted Subordinated Debt" if such indebtedness is subordinated and postponed to the prior payment and performance of all of the Obligations pursuant to a subordination agreement which is (i) of substantially the same form and substance, *mutatis mutandis*, as the Subordination Agreement and (ii) satisfactory to the Lenders.

"Permitted Title Defects" means, in respect of any real Property of a Loan Party, the following defects in title to such property:

(a) Permitted Encumbrances;

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

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

"Plan of Arrangement" means the plan of arrangement attached as Appendix A to the Arrangement Agreement and as more particularly described in the Information Circular.

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

(a) the floating annual rate of interest announced from time to time by the Agent as being its reference rate then in effect for determining interest rates on Canadian Dollar denominated commercial loans made by it in Canada and which it refers to as its "prime rate of interest"; and

(b) a rate of interest per 365 or 366 day period, as applicable, equal to the CDOR Rate for one month Canadian Dollar bankers' acceptances plus 100 bps.

"Prime Rate Advance" means the portion of an Advance made available by an Applicable Lender to the Borrower pursuant to Section 2.9 and outstanding from time to time, which is denominated in Canadian Dollars and on which the Borrower has agreed to pay interest in accordance with Section 5.1.

"Proceeds of Realization", in respect of the Security or any portion thereof, means all amounts received by the Agent, any Lender or, subject to the other provisions of this Agreement, any Hedge Provider in connection with:

(a) any realization thereof, whether occurring as a result of enforcement or otherwise;

(b) any sale, expropriation, loss or damage or other disposition of Property or any portion thereof; and

(c) the bankruptcy or winding-up of any Loan Party or any other distribution of its assets to creditors,

together with all other amounts which are expressly deemed to constitute Proceeds of Realization in this Agreement.

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

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

(a) with respect to the Facilities, the percentage of the Total Commitment which a Lender has agreed to advance to the Borrower determined by dividing the Lender's Commitment in respect of the Facilities by the aggregate of all of the Lenders' Commitments with respect to such Facilities; and

(b) with respect to an Advance, a payment or a cancelation of the Commitments only under a Facility or a Tranche of a Facility, the percentage of the respective Commitment which a Lender has agreed to advance to the Borrower in respect of such Facility or Tranche of a Facility.

"**Purchasing Lender**" has the meaning ascribed thereto in Section 4.1(e).

"**Real Property**" means a fee simple estate in any real property owned by any Person.

"**Receivables Certificate**" means a certificate of a Responsible Officer of the General Partner of the Borrower required from time to time pursuant to Section 9.4(g), the form of which is attached hereto as Schedule "F".

"**Related Person**" means, in relation to any Person, a subsidiary, affiliate, associate or employee of such Person, or an associate of such employee (the terms "subsidiary", "affiliate" and "associate" having the respective meanings ascribed thereto in the ABCA).

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

"**Relevant Jurisdiction**" means, from time to time, any province or territory in Canada or other relevant political subdivision of any other jurisdiction where any Loan Party is organized, has material Property or carries on a material portion of its business.

"**Request for an Offer of Extension**" means a request by the Borrower to the Agent for an offer by the Applicable Lenders to extend the Extendible Period in respect of the Operating Facility or the Capex Facility pursuant to Section 4.1(a), in the form attached hereto as Schedule "E", executed by a Responsible Officer of the General Partner of the Borrower.

"**Requested Lender**" has the meaning ascribed thereto in Section 4.1(a).

"**Required Lenders**" means, (i) at any time prior to the occurrence of an Event of Default which is continuing, any two or more Lenders which have issued Commitments hereunder representing two-thirds (2/3) or more of the Total Commitment; and (ii) at any time after the occurrence of an Event of Default which is continuing, any two or more Lenders on whose Advances the Outstanding Principal represents two-thirds (2/3) or more of the total amount of the Outstanding Principal under the Facilities; provided however that if at any time there are only two (2) Lenders under this Agreement, "**Required Lenders**" shall mean both such Lenders, and if at any time there is only one (1) Lender under this Agreement, "**Required Lenders**" shall mean such Lender.

"**Responsible Officer**" means the chief executive officer, president, any executive vice-president, chief financial officer, any vice-president, the controller or the treasurer of any Person.

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

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

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

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

"**Securities**" means any interest in any partnership, trust or joint venture or any securities in the capital stock of any corporation or limited liability company, in each case which carry a residual right to participate in the earnings of such partnership, trust, joint venture, corporation or limited liability company or, upon liquidation or winding up of such partnership, trust, joint venture, corporation or limited liability company, to share in its asset, and voting rights in all circumstances or voting rights conditional on the happening of an event if such event shall have occurred and be continuing.

"**Security**" means the security documents listed in Section 6.1, any amendments thereto, any indentures supplemental to or in implementation of the security documents, and any and all other documents, instruments or agreements held from time to time by the Agent, securing or intended to secure payment and performance of the Obligations.

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

"**Service Agreements**" means all agreements from time to time made between either Borrower and a Lender or any of their Affiliates in respect of cash management, payroll or other banking services.

"**Shareholders**" means the registered holders from time to time of the Common Shares.

"**Standby Fee Rate**" means, from time to time in respect of the payment of standby fees pursuant to Section 5.6, the applicable percentage rate per annum for the applicable Level beside the reference to "Standby Fee Rate" in the applicable table in the definition of "Applicable Margin".

"**Statutory Lien**" means a Security Interest in respect of any property or assets of any Loan Party created by or arising pursuant to any applicable legislation in favour of any Person (such as but not limited to a Governmental Authority), including in respect of obligations to deduct and remit employee source deductions and goods and services taxes pursuant to Applicable Law.

"**Subsidiary**" means, as to any Person:

(a) another Person of which such Person alone or in conjunction with its other Subsidiaries owns an aggregate number of Securities sufficient to enable the election of a majority of the directors (or other Persons performing similar functions) regardless of the manner in which other Securities are voted by such Person or one or more of their respective Subsidiaries, or by a combination thereof;

(b) a Person of which such Person alone or in conjunction with its other Subsidiaries has, through the operation of any agreement or otherwise, the ability to elect or cause the election of a majority of the directors (or other Persons performing similar functions) or otherwise exercise control over the management and policies of the Person by such Person or one or more of their respective Subsidiaries, or by a combination thereof;

(c) any trust of which 50% or more of the equity or beneficial interests therein are owned or controlled by such Person or one or more of their respective Subsidiaries, or by a combination thereof;

(d) any partnership or joint venture of which such Person:

  (i) is the general or managing partner, or

  (ii) directly or indirectly, owns more than 50% of the equity or beneficial interest thereof,

and shall include any Person in like relation to a Subsidiary.

"Subsidiary Guarantee" means an unlimited Guarantee granted or to be granted by BD Limited, a Material Subsidiary or a Partner to the Agent pursuant to which it guarantees the payment and performance of the Obligations of the Borrower to the Agent, the Lenders and the Hedge Providers, as the same may be amended, modified, supplemented, varied, restated or replaced from time to time.

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

"Swingline Excess Notice" means a notice from the Agent to the Operating Lenders pursuant to Section 2.4(m) hereof identifying a Swingline Reduction Amount and requiring the Operating Lenders, subject to the other terms hereof, to make their respective Proportionate Share of Advances under Tranche O-1 to repay such Swingline Reduction Amount.

"Swingline Facility" has the meaning ascribed thereto in Section 2.4.

"Swingline Lender" means BMO.

"Swingline Limit" means, at any time, the lesser of (i) the Swingline Commitment and (ii) the Operating Facility Limit at that time.

"Swingline Reduction Amount" has the meaning ascribed thereto in Section 2.4(m).

"Syndicated Letter of Credit" means a Letter of Credit issued by the Issuing Bank on behalf of the Operating Lenders or Capex Lenders, as applicable.

"Tangible Net Worth" means, with respect to BD Limited, the total equity contributed by Shareholders through their purchase of Income Fund Units, which were converted into Common Shares in accordance with the Plan of Arrangement, determined in accordance with GAAP, plus, to the extent not included in the foregoing, any Indebtedness determined on a consolidated basis which has been subordinated to the Obligations, on terms satisfactory to the Agent, less any value attributed to intangible assets as such term is defined in GAAP (such as but not limited to goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs and deferred charges).

"Tangible Net Worth Threshold" means the amount of (i) [redacted] or (ii) [redacted]lus Designated New Equity raised after the date of this Agreement.

"Total Commitment" means the aggregate of the Commitments of all of the Lenders under the Facilities (or if required by the context, under any Facility or Tranche), as hereafter cancelled, reduced, increased or terminated from time to time pursuant to this Agreement.

"Total Funded Debt" means, at any time, the aggregate total of all Debt of BD Limited on a consolidated basis.

"Total Funded Debt to EBITDA Ratio" means, at anytime in respect of BD Limited on a consolidated basis, the ratio of:

(a) the aggregate Total Funded Debt at the end of the most recently completed Fiscal Quarter; to

(b) the aggregate EBITDA for the four most recently completed Fiscal Quarters.

"Tranches" means Tranche O-1 and the Tranche O-2, and **"Tranche"** means any one of such Tranches as the context requires.

"Tranche O-1" means the portion of the Operating Facility other than the Swingline Facility.

"Tranche O-2" means the Swingline Facility (and for greater certainty, the defined terms "Tranche O-2" and "Swingline Facility" are used interchangeably in this Agreement).

"Unconsolidated Financial Statements" means the unconsolidated financial statements of a Loan Party as at a specified date and for the period then ended, including a balance sheet, statement of income and retained earnings, statement of cash flows, together with comparative figures in each case (where a comparative period on an earlier statement exists), all prepared, maintained and stated in accordance with GAAP applied consistently, except in the case of the quarterly financial statements the inclusion of any notes thereto.

"Unfinanced Capital Expenditures" means all Capital Expenditures of the Loan Parties which are not financed by (i) Advances under the Capex Facility, or (ii) Capital Lease obligations, or (iii) other Permitted Indebtedness.

"U.S. Base Rate" means, on any day with respect to a U.S. Base Rate Advance, the greater of:

(a) the floating annual rate of interest announced from time to time by the Agent as being its reference rate then in effect for determining interest rates on U.S. Dollar denominated loans made by it to its customers in Canada and designated as its "base rate"; and

(b) a rate of interest per 365 or 366 day period, as applicable, equal to the Federal Funds Rate plus 100 bps.

"U.S. Base Rate Advance" means the portion of an Advance made available by an Applicable Lender to the Borrower pursuant to Section 2.10 and outstanding from time to time, which is denominated in U.S. Dollars and on which the Borrower has agreed to pay interest in accordance with Section 5.2.

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

"**U.S. Dollar Accounts**" means the U.S.$ bank accounts maintained by Boxx with Wells Fargo and by Boxx, Nortex Acquisition Company and Nortex Opco with Texas Capital Bank.

1.2 Knowledge

Where any representation, warranty or other provision of this Agreement is qualified by reference to the knowledge of a Loan Party, after reasonable inquiry, it shall be deemed to refer to the actual knowledge of the senior management of any such Loan Party after having made such inquiries of its Responsible Officers.

1.3 Headings and Table of Contents

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

1.4 References

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

1.5 Rules of Interpretation

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

1.6 Accounting Principles

All financial statements required to be furnished by the Borrower to the Agent hereunder shall be prepared in accordance with GAAP, as in effect from time to time. Each accounting term used in this Agreement, unless otherwise defined herein, has the meaning assigned to it under GAAP, as in effect from time to time, and, except as otherwise provided herein, reference to any balance sheet item, statement of income item or statement of cash flows item means such item as computed from the applicable financial statement prepared in accordance with GAAP. Upon the adoption by the Borrower of International Financial Reporting Standards, or in the event of a change in GAAP, the Borrower and the Agent shall negotiate in good faith to revise (if appropriate) any such covenant to give effect to the intention of the parties under this Agreement as at the Effective Date, and any new covenant shall be subject to approval by the Majority Lenders. Until the successful conclusion of any such negotiation and approval by the Majority Lenders, all calculations thereafter made for the purpose of determining compliance with any financial covenant contained herein shall be made on a basis consistent with GAAP in existence as at the Effective Date.

1.7 Time

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

1.8 Currency References and Payments

All amounts of money referred to in this Agreement are in Canadian Dollars unless otherwise stated. All payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose. Except as otherwise expressly provided in this Agreement, wherever this Agreement contemplates or requires the calculation of the equivalent in Canadian Dollars or U.S. Dollars of an amount expressed in another of those currencies, the calculation shall be made on the basis of the Equivalent Amount at the effective date of the calculation.

1.9 Payment for Value

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

1.10 Schedules

Schedule "A"	-	Commitments of the Lenders
Schedule "B"	-	Compliance Certificate
Schedule "C"	-	Drawdown, Conversion or Rollover Notice
Schedule "D"	-	Repayment Notice
Schedule "E"	-	Request for an Offer of Extension
Schedule "F"	-	Receivables Certificate
Schedule "G"	-	Capex Borrowing Base Certificate
Schedule "H"	-	CBA Model Provisions
Schedule "I"	-	Loan Party Information
Schedule "J"	-	Real Property

ARTICLE II
CREDIT FACILITIES

OPERATING FACILITY

2.1 Establishment of the Operating Facility

Subject to the provisions of this Agreement, the Operating Lenders agree to provide a revolving loan facility (the **"Operating Facility"**) under which the Borrower may at any time borrow, repay and reborrow an aggregate principal amount not to exceed at any time the Operating Facility Limit at such time; <u>provided</u> that the obligation of each Operating Lender to make Advances under the Operating Facility shall be several and shall not exceed its Proportionate Share of the Operating Facility Commitment. At the option of the Borrower, Tranche O-1 may be used by requesting Prime Rate Advances, U.S. Base Rate Advances, BA Advances or Letter of Credit Advances from the Operating Lenders; each Advance by an Operating Lender under Tranche O-1 shall be made by such Lender in its Proportionate Share of Tranche O-1. Tranche O-2 may be used by requesting Advances from the Swingline Lender only, as more particularly set out in Section 2.4. Notwithstanding the foregoing, the aggregate principal amounts outstanding of U.S. Base Rate Advances (including deemed U.S. Base Rate Advances) under the Operating Facility shall not exceed the Operating Facility U.S. Sub-Limit.

2.2 Purpose

The Operating Facility shall only be used for ongoing working capital and general corporate and partnership purposes of the Loan Parties.

2.3 Revolvement

The principal amount of any Advance under the Operating Facility that is repaid may be reborrowed from time to time, subject to the restrictions set out in Sections 2.1, 2.4, 2.9, 2.10, 2.17 and 3.6, until the Operating Facility Maturity Date, following which the undrawn Commitment under the Operating Facility will be cancelled and all Obligations under the Operating Facility shall become immediately due and payable in accordance with Section 3.2. For greater certainty, the Operating Facility shall revolve (i) in respect of Prime Rate Advances and repayments thereof (other than those made under Sections 3.1 and 3.2) in a minimum amount of $500,000 and in whole multiples of $100,000 thereafter and (ii) in respect of U.S. Base Rate

Advances and repayments thereof (other than those made under Sections 3.1 and 3.2) in a minimum amount of U.S.$500,000 and in whole multiples of U.S.$100,000 thereafter.

2.4 Swingline Facility

A portion of Facility A in the maximum amount of the Swingline Limit is hereby designated as the "**Swingline Facility**" (or "**Tranche O-2**") and shall be subject to the following terms and conditions (in addition to any other applicable terms and conditions contained in this Agreement):

(a) The Swingline Facility shall be established and maintained by the Swingline Lender only, and the Swingline Lender shall not have the right to assign or grant a participation in the Swingline in whole or in part to any other Person without the consent of the Borrower;

(b) The Outstanding Principal under the Swingline shall not at any time exceed the Swingline Limit;

(c) The Swingline Facility shall form a part of the Operating Facility and, except to the extent provided in this Section 2.4, shall be subject to all the terms and conditions in this Article II that are applicable to the Operating Facility;

(d) Subject to paragraphs (e), (g) and (h) below, Advances to and repayments by the Borrower under the Swingline Facility shall be made by way of Overdrafts in the following manner: the Swingline Lender will make Advances in Cdn Dollars into the Borrower's Account, from time to time as required in order to honour cheques drawn by the Borrower on such account which are presented to the Swingline Lender for payment. As deposits are made into the Borrower's Account by the Borrower, the Swingline Lender shall withdraw funds from such Borrower's Account from time to time and apply such funds as repayments under the Swingline Facility;

(e) The Borrower may also receive Advances under the Swingline Facility by requesting a Prime Rate Advance from the Swingline Lender;

(f) The Borrower acknowledges that U.S. Base Rate Advances are not available under the Swingline Facility;

(g) The Borrower may also receive Advances under the Swingline Facility by means of the issuance by the Swingline Lender of Letters of Credit in Canadian Dollars, as provided in Section 2.13;

(h) The Borrower may also receive Advances under the Swingline Facility under corporate MasterCards (each, a "**MasterCard Advance**") issued by the Swingline Lender to employees and officers of the Borrower or another Loan Party (subject to the execution and delivery of the Borrower of a MasterCard agreement and all related documentation required by the Swingline Lender in form and substance satisfactory to it), to be used by such employees or officers for corporate, partnership or trust purposes, including purchasing supplies and funding miscellaneous business expenses. The Swingline Lender may from time to time, by not less than 30 days' written notice to the Borrower, establish a limit, or amend any limit previously established, with respect to the maximum amount of credit available under such corporate MasterCards. As at the date of this Agreement, such limit is $[redacted] MasterCard Advances are available on a demand, non-margined basis, and are subject to the standard repayment and interest terms of the Swingline Lender for such MasterCards;

(i) Each Advance under the Swingline Facility by way of Overdraft shall automatically be deemed a Prime Rate Advance;

(j) Except in respect of Letters of Credit issued under the Swingline, Advances and repayments under the Swingline shall be without notice to or from the Borrower and shall be on a dollar for dollar basis (not subject to multiples);

(k) The Borrower covenants not to effect any Advance under the Swingline Facility that would cause the Outstanding Principal under the Swingline Facility to exceed the Swingline Limit, and the Borrower acknowledges that the Swingline Lender reserves the right to refuse to honour any Overdraft hereunder which, in the opinion of the Swingline Lender, would have the effect of causing the Swingline Limit to be so exceeded;

(l) The Swingline Lender shall monitor the Swingline Facility for the purpose of identifying any excess Indebtedness thereunder, and, upon the Swingline Lender becoming aware of any such excess Indebtedness under the Swingline Facility in any amount which exceeds the Swingline Limit, the Swingline Lender shall forthwith provide notice to the Borrower requiring the Borrower to repay the amount of any such excess, in accordance with paragraph (m) below; and

(m) The Swingline Lender may in its discretion at any time, including, but not limited to, upon the occurrence of an excess Indebtedness described in paragraph (l) above, by written notice to the Borrower, require the Borrower to reduce the Outstanding Principal under the Swingline Facility by a specified amount (a "**Swingline Reduction Amount**"). The Borrower agrees to promptly comply with such request within two (2) Business Days after receipt thereof, by making a repayment on the Swingline from its own resources or by requesting an Advance under Tranche O-1, the proceeds of which shall be applied to reduce the Outstanding Principal under the Swingline Facility accordingly. If the Borrower fails to comply with any such request from the Swingline Lender within two (2) Business Days after receipt thereof, the Agent shall, upon request by the Swingline Lender, provide the Operating Lenders with a notice thereof (the "**Swingline Excess Notice**") and the Operating Lenders shall make Prime Rate Advances in their respective Proportionate Shares of the Operating Facility in an aggregate amount sufficient to repay the Swingline Reduction Amount, the proceeds of which shall be applied to reduce the Outstanding Advances under the Swingline Facility, provided that each such Prime Rate Advance shall be in a minimum amount of $500,000 and in whole multiples of $100,000 thereafter. In addition, in order to achieve the Swingline Reduction Amount the Borrower may also request that any Letter of Credit issued by the Swingline Lender under the Swingline Facility be converted into a Syndicated Letter of Credit under Tranche O-1, and the parties agree to promptly execute and deliver all such documents and assurances to effect any such request made by the Borrower.

CAPEX FACILITY

2.5 Establishment of the Capex Facility

Subject to the provisions of this Agreement, the Capex Lenders agree to provide a revolving loan facility (the "**Capex Facility**") under which the Borrower may at any time borrow, repay and reborrow an aggregate principal amount up to the Capex Facility Limit then in effect; provided that the obligation of each Capex Lender to make Advances under the Capex Facility shall be several and shall not exceed its Proportionate Share of the Capex Facility Commitment. At the option of the Borrower, the Capex Facility may be used by requesting Prime Rate Advances, U.S. Base Rate Advances, BA Advances or Letter of Credit Advances from the Capex Lenders; provided that the aggregate principal amounts outstanding of U.S. Base Rate Advances (including deemed U.S. Base Rate Advances) under the Capex Facility shall not exceed the Capex Facility U.S. Sub-Limit.

2.6 Purpose

The Capex Facility shall only be used for financing Capital Expenditures and Acquisitions of the Loan Parties (subject to the restrictions hereunder, including without limitation those found in Section 9.8). For further clarification, the Capex Facility shall not be used to fund Distributions.

2.7 Revolvement

The principal amount of any Advance under the Capex Facility that is repaid may be reborrowed from time to time, subject to the restrictions set out in Sections 2.5, 2.9, 2.10, 2.11, 2.17 and 3.6, until the Capex Facility Maturity Date, following which all undrawn Commitments under the Capex Facility will be cancelled and all Obligations under the Capex Facility shall become due and payable in accordance with Section 3.4.

COMMON PROVISIONS

2.8 Payment and Notice of Drawdowns, Rollovers and Conversions

(a) The Borrower shall provide irrevocable written notice to the Agent in respect of Advances, Rollovers, Conversions and Repayments to the extent set out below:

(i) no notice is required for Advances and repayments in respect of Overdrafts or MasterCard Advances;

(ii) except as provided in paragraph (i) above, one (1) Business Day's notice is required before 9:00 a.m. Calgary time in respect of any Advance, Rollover, Conversion or voluntary Repayment in Canadian Dollars or U.S. Dollars if the amount is equal to or less than Cdn $10,000,000 (or the U.S. Dollar Equivalent Amount thereof);

(iii) except as provided in paragraphs (i) and (ii) above, two (2) Business Days' notice is required before 9:00 a.m. Calgary time in respect of any Advance, Rollover, Conversion or voluntary Repayment in Canadian Dollars or U.S. Dollars if the amount is greater than Cdn $10,000,000 (or the U.S. Dollar Equivalent Amount thereof);

(iv) notwithstanding the foregoing, if an Advance, Rollover, Conversion or voluntary Repayment relates to a Bankers' Acceptance or BA Equivalent Loan, three (3) Business Days' notice is required before 9:00 a.m. Calgary time; and

(v) notwithstanding the foregoing, if an Advance relates to the issuance of a Letter of Credit, three (3) Business Days' notice is required before 9:00 a.m. Calgary time.

(vi) notice of any Advance, Rollover, Conversion or voluntary Repayment referred to in this Section 2.8 shall be given in the form of a Drawdown Request, Rollover Notice, Conversion Notice or Repayment Notice, as the case may be, and shall be given to the Agent at its address as set out in Section 13.11.

(vii) If notice is not provided as contemplated in this Section 2.8 with respect to the maturity of any Bankers' Acceptance or BA Equivalent Loan, the Agent shall convert such Bankers' Acceptance or BA Equivalent Loan upon its maturity into a Prime Rate Advance.

(b) Payments by the Borrower (other than those being made solely from the proceeds of Rollovers and Conversions) must be made prior to 9:00 a.m. (Calgary time) on any Business Day that such payment is due.

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

(d) If a notice or payment is not given or made by the times required by this Section 2.8, it shall be deemed to have been given or made on the next Business Day unless all Lenders affected by the late notice or payment agree, in their sole discretion, to accept a notice or payment as being effective on the date it is given or made.

2.9 Prime Rate Advances

Subject to the other provisions of this Agreement, upon timely fulfillment of all applicable conditions as set forth in this Agreement, the Operating Lenders (in the case of the Operating Facility), the Swingline Lender (in the case of the Swingline Facility) or the Capex Lenders (in the case of the Capex Facility) will make the requested amount of a Prime Rate Advance available to the Borrower on the Drawdown Date requested by the Borrower by crediting such amount to the Borrower's Account, in the case of the Swingline Facility, or the Agent's Account, in the case of the Operating Facility and the Capex Facility. Each Prime Rate Advance under Tranche O-1 or the Capex Facility (but for further clarification not including Advances by way of Overdraft or Prime Rate Advances under the Swingline Facility) shall be in a minimum amount of $500,000 and in whole multiples of $100,000 thereafter.

2.10 U.S. Base Rate Advances

Subject to the other provisions of this Agreement, upon timely fulfillment of all applicable conditions as set forth in this Agreement, the Operating Lenders (in the case of the Operating Facility) or the Capex Lenders (in the case of the Capex Facility) will make the requested amount of a U.S. Base Rate Advance available to the Borrower on the Drawdown Date requested by the Borrower by crediting such amount to the Agent's Account, in the case of the Operating Facility and the Capex Facility. Each U.S. Base Rate Advance (but for further clarification not including Advances by way of Overdraft) shall be in a minimum amount of U.S.$500,000 and in whole multiples of U.S.$100,000 thereafter.

2.11 Capex Facility Advances

Each Prime Rate Advance under the Capex Facility shall be in a minimum amount of $500,000 and in whole multiples of $100,000, and shall be subject to the disbursement conditions set out in Article VII hereof. Each U.S. Base Rate Advance under the Capex Facility shall be in a minimum amount of U.S.$500,000 and in whole multiples of U.S.$100,000, and shall be subject to the disbursement conditions set out in Article VII hereof.

2.12 Co-ordination of Prime Rate Advances and U.S. Base Rate Advances- Tranche O-1 and Capex Facility

Each Lender shall advance its Proportionate Share of each Prime Rate Advance and U.S. Base Rate Advance under Tranche O-1 and the Capex Facility, as applicable, in accordance with the following provisions:

(a) the Agent shall advise each Lender of its receipt of notice from the Borrower pursuant to Section 2.8 on the day such notice is received, and shall as soon as possible advise each Lender of such Lender's Proportionate Share of the Advance requested by such notice;

(b) each Lender shall deliver its Proportionate Share of the requested Advance in the applicable currency to the Agent not later than 10:00 a.m. (Calgary time) on the Drawdown Date; and

(c) subject to the Borrower meeting the conditions precedent in respect thereof by not later than 10:00 a.m. (Calgary time) on the Drawdown Date, the Agent shall advance to the Borrower the amount delivered by each Lender by crediting the Agent's Account, provided that if the conditions precedent to the Advance are not met by 9:00 a.m. (Calgary time) on the Drawdown Date, the Agent shall return the funds to the Lenders or invest them in an overnight investment in the Agent's discretion until such time as the Advance is made.

2.13 Letters of Credit Procedures and Limitations – Operating Facility

Upon timely fulfillment of all applicable conditions as set forth herein, the Swingline Lender in the case of the Swingline Facility and the Issuing Bank in the case of Tranche O-1 agree to issue Letters of Credit under the Swingline Facility and Tranche O-1, respectively, on any Business Day for the account of the Borrower. The following provisions shall apply to each Letter of Credit Advance issued under the Operating Facility:

(a) Letters of Credit may be issued under the Operating Facility for the account of the Borrower in Canadian Dollars, in the case of the Swingline Facility, or in all major currencies offered by the Issuing Bank, in the case of Tranche O-1, provided that the Equivalent Amount expressed in Canadian Dollars of the aggregate face amount of all Letters of Credit outstanding under the Operating Facility at any time may not exceed $500,000.

(b) Letters of Credit may not be used to guarantee or secure third party Debt (other than Debt of a Loan Party);

(c) each Letter of Credit shall expire not later than 364 days after its date of issuance, unless otherwise agreed to by the Swingline Lender or Issuing Bank, as applicable;

(d) no Letter of Credit shall have an expiration date that is later than the current Operating Facility Maturity Date;

(e) each request for the issuance of a Letter of Credit shall be delivered by the Borrower to the Agent in accordance with the notice provisions set out in Section 2.8 herein, together with the customary form of application and indemnity agreement of the Swingline Lender or the Issuing Bank, as applicable, completed to the satisfaction of the Swingline Lender or the Issuing Bank, as applicable, and the proposed form of the Letter of Credit (which shall be satisfactory to the Swingline Lender or Issuing Bank, as applicable) and such other certificates, documents and other papers and information as the Swingline Lender or Issuing Bank, as applicable, may reasonably request (collectively, the **"Letter of Credit Documentation"**), provided that the Borrower and the Swingline Lender or the Issuing Bank, as applicable, shall agree to make such changes to such Letter of Credit Documentation to ensure that such Letter of Credit Documentation is consistent with the provisions of this Agreement;

(f) concurrently with each request for the issuance of a Letter of Credit, the Borrower shall notify the Agent in writing whether: (i) the Letter of Credit is to be issued by the Swingline Lender on its own behalf under the Swingline Facility, or (ii) the Letter of Credit is to be a Syndicated Letter of Credit;

(g) in the case of a Letter of Credit to be issued by the Swingline Lender only, the Agent shall, as soon as reasonably practicable, notify the Swingline Lender of the principal amount, the number, and the expiration date of each Letter of Credit to be issued by the Swingline Lender, and shall deliver to the Swingline Lender the Letter of Credit Documentation. The Swingline Lender shall review each draft and any accompanying documents presented under such Letter of Credit. Promptly after it shall have ascertained that any draft and any accompanying documents presented under such Letter of Credit appear on their face to be in substantial conformity with the terms and conditions of the Letter of Credit, the Swingline Lender shall give notice to the Borrower of the receipt and amount of such draft and the date on which payment thereon will be made, and the Swingline Lender shall, by 10:00 a.m. Calgary time make the appropriate payment to the beneficiary of such Letter of Credit. All payments made by the Swingline Lender to any Person pursuant to a Letter of Credit shall, unless the Borrower reimburses the Swingline Lender for such payment on or before the date it is made, be deemed as and from the date of such payment to be a Prime Rate Advance, with the proceeds of such Prime Rate Advance being applied against the Borrower's Obligations to reimburse the Swingline Lender for payment made under the Letter of Credit;

(h) in the case of a Syndicated Letter of Credit only, the Agent shall, as soon as reasonably practicable, notify the Issuing Bank and each Operating Lender of the principal amount, the number, and the expiration date of each Syndicated Letter of Credit and the amount of such Operating Lender's participation therein, and shall deliver to the Issuing Bank the Letter of Credit Documentation. By the issuance of a Syndicated Letter of Credit hereunder and without further action on the part of the Issuing Bank or the Operating Lenders, each said Operating Lender hereby accepts from the Issuing Bank a participation (which participation shall be nonrecourse to the Issuing Bank) in such Syndicated Letter of Credit in such Operating Lender's Proportionate Share of Tranche O-1, effective upon the issuance of such Syndicated Letter of Credit. Each Operating Lender hereby absolutely and unconditionally assumes, as primary obligor and not as a surety, and agrees to pay and discharge and to indemnify and hold the Issuing Bank harmless from liability in respect of, such Operating Lender's said Proportionate Share of the amount of any drawing under a Syndicated Letter of Credit. Each said Operating Lender acknowledges and agrees that its obligation to acquire participations in each Syndicated Letter of Credit issued by the Issuing Bank and its obligation to make the payments specified herein, and the right of the Issuing Bank to receive the same, in the manner specified herein, are absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of an Event of Default hereunder, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. The Issuing Bank shall review each draft and any accompanying documents presented under a Syndicated Letter of Credit and shall notify each said Operating Lender of any such presentment. Promptly after it shall have ascertained that any draft and any accompanying documents presented under such Syndicated Letter of Credit appear on their face to be in substantial conformity with the terms and conditions of the Syndicated Letter of Credit, the Issuing Bank shall give notice to each said Operating Lender and the Borrower of the receipt and amount of such draft and the date on which payment thereon will be made, and each said Operating Lender shall, by 10:00 a.m. Calgary time on the date such payment is to be made, pay its said Proportionate Share of the amount so drawn under the Syndicated Letter of Credit in immediately available funds, and the Issuing Bank shall make the appropriate payment to the beneficiary of such Syndicated Letter of Credit. All payments made by an Operating Lender pursuant to a Syndicated Letter of Credit shall, unless the Borrower reimburses such Operating Lender for such payment on or before the date it is made, be deemed as and from the date of such payment to be (i) a U.S. Base Rate Advance, in the case of Letter of Credit Advances in U.S. Dollars, or (ii) a Prime Rate Advance, in the case of Letter of Credit Advances in Cdn Dollars and any other currency (with all Letter of Credit Advances in currencies other than Canadian Dollars or U.S. Dollars being converted to the Equivalent Amount of Canadian Dollars), in each case with the proceeds of such U.S. Base Rate Advance or Prime Rate Advance being applied against the Borrower's Obligations to reimburse such Operating Lender for payment made under the Syndicated Letter of Credit;

(i) For greater clarification, the Swingline Lender or the Issuing Bank, as applicable, shall have no obligation to issue a Letter of Credit until:

(i) the Swingline Lender or the Issuing Bank, as applicable, has received notice of and acknowledged the Borrower's request for the Letter of Credit,

(ii) the applicable fee(s) payable to the Swingline Lender or the Issuing Bank, as applicable, have been paid by the Borrower,

(iii) such ancillary documents as the Swingline Lender or the Issuing Bank, as applicable, normally requires for similar transactions have been executed and delivered to the Swingline Lender or the Issuing Bank, as applicable, and

(iv) in the case of the Conversion of an existing Advance to a Letter of Credit Advance, the full amount of the Advance being converted together with all interest, fees and other amounts applicable thereto have been paid to the Swingline Lender or the Operating Lenders, as applicable.

2.14 Letters of Credit Procedures and Limitations – Capex Facility

Upon timely fulfillment of all applicable conditions as set forth herein, the Issuing Bank agrees to issue Letters of Credit under the Capex Facility on any Business Day for the account of the Borrower. The following provisions shall apply to each Letter of Credit Advance issued under the Capex Facility:

(a) Letters of Credit may be issued under the Capex Facility for the account of the Borrower in all major currencies offered by the Issuing Bank, provided that the Equivalent Amount expressed in Cdn Dollars of the aggregate face amount of all Letters of Credit outstanding under the Capex Facility at any time may not exceed [redacted]

(b) Letters of Credit may not be used to guarantee or secure third party Debt (other than Debt of a Loan Party);

(c) each Letter of Credit shall expire not later than 364 days after its date of issuance, unless otherwise agreed to by the Issuing Bank;

(d) no Letter of Credit shall have an expiration date that is later than the current Capex Facility Maturity Date;

(e) each request for the issuance of a Letter of Credit shall be delivered by the Borrower to the Agent in accordance with the notice provisions set out in Section 2.8 herein, together with the customary form of application and indemnity agreement of the Issuing Bank, completed to the satisfaction of the Issuing Bank and the proposed form of the Letter of Credit (which shall be satisfactory to the Issuing Bank) and such other certificates, documents and other papers and information as the Issuing Bank may reasonably request (collectively, the "**Letter of Credit Documentation**"), provided that the Borrower and the Issuing Bank shall agree to make such changes to such Letter of Credit Documentation to ensure that such Letter of Credit Documentation is consistent with the provisions of this Agreement;

(f) each Letter of Credit under the Capex Facility shall be a Syndicated Letter of Credit;

(g) the Agent shall, as soon as reasonably practicable, notify the Issuing Bank and each Capex Lender of the principal amount, the number, and the expiration date of each Syndicated Letter of Credit and the amount of such Capex Lender's participation therein, and shall deliver to the Issuing Bank the Letter of Credit Documentation. By the issuance of a Syndicated Letter of Credit hereunder and without further action on the part of the Issuing Bank or the Capex Lenders, each said Capex Lender hereby accepts from the Issuing Bank a participation (which participation shall be nonrecourse to the Issuing Bank) in such Syndicated Letter of Credit in such Capex Lender's Proportionate Share of the Capex Facility, effective upon the issuance of such Syndicated Letter of Credit. Each Capex Lender hereby absolutely and unconditionally assumes, as primary obligor and not as a surety, and agrees to pay and discharge and to indemnify and hold the Issuing Bank harmless from liability in respect of, such Capex Lender's said Proportionate Share of the amount of any drawing under a Syndicated Letter of Credit. Each said Capex Lender acknowledges and agrees that its obligation to acquire participations in each Syndicated Letter of Credit issued by the Issuing Bank and its obligation to make the payments specified herein, and the right of the Issuing Bank to receive the same, in the manner specified herein, are absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of an Event of Default hereunder, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. The Issuing Bank shall review each draft and any accompanying documents presented under a Syndicated Letter of Credit and shall notify each said Capex Lender of any such presentment. Promptly after it shall have ascertained that any draft and any accompanying documents presented under such Syndicated Letter of Credit appear on their face to be in substantial conformity with the terms and conditions of the Syndicated Letter of Credit, the Issuing Bank shall give notice to each said Capex Lender and the Borrower of the receipt and amount of such draft and the date on which payment thereon will be made, and each said Capex Lender shall, by 10:00 a.m. Calgary time on the date such payment is to be made, pay its said Proportionate Share of the amount so drawn under the Syndicated Letter of Credit in immediately available funds, and the Issuing Bank shall make the appropriate payment to the beneficiary of such Syndicated Letter of Credit. All payments made by a Capex Lender pursuant to a Syndicated Letter of Credit shall, unless the Borrower reimburses such Capex Lender for such payment on or before the date it is made, be deemed as and from the date of such payment to be (i) a U.S. Base Rate Advance, in the case of Syndicated Letter of Credit Advances in U.S. Dollars, or (ii) a Prime Rate Advance, in the case of Syndicated Letter of Credit Advances in Cdn Dollars and any other currency (with all Syndicated Letter of Credit Advances in currencies other than Canadian Dollars or U.S. Dollars being converted to the Equivalent Amount of Canadian Dollars), in each case with the proceeds of such U.S. Base Rate Advance or Prime Rate Advance being applied against the Borrower's Obligations to reimburse such Capex Lender for payment made under the Syndicated Letter of Credit;

(h) For greater clarification, the Issuing Bank shall have no obligation to issue a Letter of Credit until:

(i) the Issuing Bank has received notice of and acknowledged the Borrower's request for the Letter of Credit,

(ii) the applicable fee(s) have been paid by the Borrower,

(iii) such ancillary documents as the Issuing Bank normally requires for similar transactions have been executed and delivered to the Issuing Bank; and

(iv) in the case of the Conversion of an existing Advance to a Letter of Credit Advance, the full amount of the Advance being converted together with all interest, fees and other amounts applicable thereto have been paid to the Capex Lenders, as applicable.

2.15 Letter of Credit Indemnity

(a) Except to the extent of the gross negligence or wilful misconduct of the Swingline Lender, the Issuing Bank or Operating Lenders, or the Issuing Bank or the Capex Lenders, as applicable, the Borrower hereby indemnifies and holds the Swingline Lender, the Issuing Bank and the Operating Lenders, and the Issuing Bank and the Capex Lenders, as applicable, harmless from and against any loss or expense with respect to any Letter of Credit Advances made pursuant to this Agreement, including to the extent of:

(i) any payment made thereunder to and for the account of the applicable beneficiary thereof, including all obligations imposed by foreign laws and all fees and commissions and all charges and expenses paid or incurred by the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable, in connection with the Letter of Credit plus any interest, where applicable;

(ii) all losses, costs, damages or expenses suffered or incurred by the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable, in any manner whatsoever by reason or in consequence of making any Letter of Credit Advance, either directly or indirectly, or any renewal thereof;

(iii) any claim that the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable, should have refrained from making payment under any Letter of Credit by virtue of (i) being aware, actually, constructively or otherwise, of facts justifying a decision to decline making a payment under the Letter of Credit, or (ii) some impropriety by the beneficiary or its successors, assigns or other Persons in seeking payment under the Letter of Credit;

(iv) all claims and expenses, whether awarded by a court or not, incurred by the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable, in the prosecution or defence of any claim in any way related to the Letter of Credit; and

(v) reasonable legal fees on a solicitor and client basis incurred in connection with any of the foregoing.

(b) The obligation of the Borrower under Section 2.13, Section 2.14 and this Section 2.15 to reimburse the Swingline Lender, the Issuing Bank and the Operating Lenders, or the Issuing Bank and the Capex Lenders, as applicable, for all drawings under Letters of Credit and for any loss or expense with respect to any Letter of Credit Advance shall be absolute, unconditional and irrevocable and shall be satisfied strictly in accordance with their terms, irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit;

(ii) the existence of any claim, setoff, defence or other right which the Borrower or any other Person may at any time have against the beneficiary under any Letter of Credit, or against the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable (other than the defence of payment in accordance with the terms of this Agreement or a defence based on the gross negligence or wilful misconduct of the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable) or any other Person in accordance with this Agreement or other transaction;

(iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; and

(iv) any other circumstance or event whatsoever, whether or not similar to any of the foregoing;

(c) In making any payment under any Letter of Credit, (i) the exclusive reliance of the Swingline Lender or the Issuing Bank, as applicable, on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (ii) any non-compliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, not be deemed wilful misconduct or negligence of the Swingline Lender, the Issuing Bank or any Operating Lender, or the Issuing Bank or any Capex Lender, as applicable.

(d) The Swingline Lender or the Issuing Bank, as applicable, and its correspondents may accept and act upon the name, signature, or act of any party purporting to be the executor, administrator, receiver, trustee in bankruptcy or other legal representative of any party designated in any Letter of Credit in the place of the name, signature, or act of such party.

(e) Without limiting any other provisions of this Agreement, if the Borrower shall fail to reimburse the Swingline Lender, or the Issuing Bank or any Operating Lender, or the Issuing Bank of any Capex Lender, as applicable, for any payments made by the Swingline Lender, or the Issuing Bank or any Operating Lender, or the Issuing Bank of any Capex Lender, as applicable, under a Letter of Credit as contemplated in Section 2.13, Section 2.14 or this Section 2.15, the amount that the Borrower fails to reimburse the applicable Person shall be deemed to be a U.S. Base Rate Advance for payments made in U.S. Dollars and a Prime Rate Advance for payments made in Canadian Dollars or any other currency. The Agent shall forthwith give notice of such Advance to the Borrower. Interest shall be payable on such deemed Prime Rate Advance or U.S. Base Rate Advance from the date of such deemed Prime Rate Advance or U.S. Base Rate Advance in accordance with the terms of this Agreement.

2.16 Bankers' Acceptances - Power of Attorney

(a) To facilitate the acceptance of drafts hereunder, the Borrower hereby appoints each BA Lender, acting by the commercial paper clerk or other designated securities officer (the "**Attorney**") for the time being at each BA Lender's branch of account, the attorney of the Borrower:

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

(ii) to fill in the amount, date and maturity date of such drafts,

and drafts so completed, signed and endorsed on behalf of the Borrower by any BA Lender shall bind that the Borrower as fully and effectively as if so performed by duly authorized officers of the Borrower; provided that such acts in each case are to be undertaken by that BA Lender in accordance with instructions given to that BA Lender by the Borrower as provided in this Section 2.16.

(b) Instructions to the BA Lenders relating to the execution, completion, discount and/or deposit by the BA Lenders on behalf of the Borrower of drafts which the Borrower wishes to submit to the BA Lenders for acceptance by the BA Lenders shall be communicated by the Agent and/or the Borrower to the BA Lenders in writing at their respective branches of account following delivery by the Borrower of a Drawdown Notice, Conversion Notice or Rollover Notice pursuant to this Agreement, and shall specify the following information:

(i) reference to this power of attorney;

(ii) a Canadian Dollar amount, which shall be the aggregate Face Amount of the drafts to be accepted by the BA Lenders in respect of a particular Advance and the specific amount for each BA Lender;

(iii) a specified period of time as provided in this Agreement which shall be the number of days after the date of acceptance of such drafts that such drafts are to be payable, and the dates of issue of such drafts; and

(iv) payment instructions specifying the account number of the Borrower and the financial institution at which the BA Discount Proceeds are to be credited.

(c) The communication in writing by the Borrower to the BA Lenders of the instructions referred to above shall constitute the authorization and instruction of the Borrower to the BA Lenders to complete and execute drafts in accordance with such information as set out above and the request of the Borrower to the BA Lenders to accept such drafts and deposit the same with the "clearing house" against payment as set out in the instructions. The Borrower acknowledges that the BA Lenders shall not be obligated to accept any such drafts except in accordance with the provisions of this Agreement. The BA Lenders shall be and they are hereby authorized to act on behalf of the Borrower upon and in compliance with instructions communicated to the BA Lenders as provided herein if the BA Lenders reasonably believe them to be genuine.

(d) The Borrower agrees to indemnify the BA Lenders and their respective directors, officers, employees, affiliates and agents and to hold them harmless from and against any loss, liability, expense or claim of any kind or nature whatsoever incurred by any of them as a result of any action or inaction in any way relating to or arising out of this power of attorney or the acts contemplated hereby including the deposit of any draft with the "clearing house"; provided that this indemnity shall not apply to any such loss, liability, expense or claim which results from the gross negligence or wilful misconduct of the BA Lenders or any of their respective directors, officers, employees, affiliates or agents.

(e) This power of attorney may be revoked by the Borrower in respect of any BA Lender at any time upon not less than five (5) Business Days' written notice served upon that BA Lender; provided that (i) it may be replaced with another power of attorney forthwith in accordance with the requirements of this Agreement; and (ii) no such revocation shall reduce, limit or otherwise affect the obligations of the Borrower in respect of any draft executed, completed, discounted and/or deposited in accordance herewith prior to the time at which such revocation becomes effective. This power of attorney may be terminated by any BA Lender at any time on not less than five (5) Business Days' written notice to the Borrower. Any revocation or termination of this power of attorney shall not affect the rights of the BA Lenders and the obligations of the Borrower with respect to the indemnities of the Borrower stated above.

(f) This power of attorney is in addition to and not in substitution for any agreement to which the BA Lenders and the Borrower are parties.

(g) The Borrower may, at its option, execute any draft by the facsimile signatures of any two authorized signing officers of the Borrower, and the Agent and each BA Lender is hereby authorized to accept or pay, as the case may be, any draft of the Borrower which has been completed pursuant to a power of attorney referred to in this Section 2.16 or which purports to bear such facsimile signatures notwithstanding that, subsequent to the issuance of the Bankers' Acceptance, the power of attorney has been revoked or any such individual has ceased to be an authorized signing officer of the Borrower, and any such draft or Bankers' Acceptance so executed and completed or executed and completed pursuant to the power of attorney shall be as valid as if it has been signed by an authorized signing officer of the Borrower at the date of issue of such Bankers' Acceptance. Any such draft or Bankers' Acceptance bearing facsimile signatures may be dealt with by the Agent or any BA Lender to all intents and purposes and shall bind the Borrower as if duly signed in each signing officer's own handwriting and issued by the Borrower, and the Borrower hereby agrees to hold the Agent and each BA Lender harmless and indemnified against all loss, costs, damages and expenses arising out of the payment or negotiation of any such draft or Bankers' Acceptance resulting from such drafts not having been duly signed. No BA Lender shall be liable for its failure to accept a Bankers' Acceptance as required hereunder if the cause of such failure, in whole or in part, is due to the revocation or termination of the power of attorney or the failure of the Borrower to provide the power of attorney or executed drafts to the Agent on a timely basis.

(h) The receipt by the Agent of a request for an Advance by way of Bankers' Acceptances shall be each BA Lender's sufficient authority to complete and sign (as applicable), and each BA Lender shall, subject to the terms and conditions of this Agreement, complete and sign (as applicable) such drafts in accordance with such request and the advice of the Agent given pursuant to this Section 2.16, and the drafts so completed and signed (as applicable) shall thereupon be deemed to have been presented for acceptance.

2.17 Size and Maturity of Bankers' Acceptances and BA Equivalent Loans

Each Advance of Bankers' Acceptances and BA Equivalent Loans shall be in a minimum initial amount of [redacted]nd in whole multiples of [redacted]hereafter. Each Bankers' Acceptance or BA Equivalent Loan shall have a term, selected by the Borrower, of 30 to 180 days, or of such longer period to which the Lenders may agree, after the date of acceptance of the draft by the BA Lenders or the date of advancing such BA Equivalent Loan by the Non BA Lenders, as applicable, but no Bankers' Acceptance or BA Equivalent Loan may mature on a day which is not a Business Day or on a date which is later than the applicable Maturity Date. The Face Amount at maturity of a Bankers' Acceptance or a Notional Bankers' Acceptance may be Rolled Over or Converted into another form of Advance permitted by this Agreement.

2.18 Co-ordination of BA Advances and BA Equivalent Loans – Operating Facility and Capex Facility

Each Lender shall advance its Proportionate Share of each Advance by way of Bankers' Acceptances and BA Equivalent Loans under Tranche O-1 or the Capex Facility, as applicable, in accordance with the following provisions:

(a) the Agent, as soon as reasonably practicable following its receipt of a notice from the Borrower pursuant to Section 2.8 requesting an Advance by way of Bankers' Acceptances under the Operating Facility (for greater certainty, Tranche O-1 only) or the Capex Facility, shall (i) advise each BA Lender of the Face Amount of the Bankers' Acceptances to be accepted by it, and (ii) advise each Non BA Lender of the Face Amount of its Notional Bankers' Acceptance. The aggregate Face Amount of the Bankers' Acceptances to be accepted by a BA Lender and the Face Amount of the Notional Bankers' Acceptance for each Non BA Lender shall be determined by the Agent by reference to the respective Commitments of the Lenders under the applicable Facility; provided that, if the Face Amount of a Bankers' Acceptance in the case of a BA Lender or the Face Amount of a Notional Bankers' Acceptance used to determine the amount of a BA Equivalent Loan in the case of a Non BA Lender would not be a whole multiple of $100,000 thereof, the Face Amount shall be increased or reduced by the Agent in its sole discretion to the nearest whole multiple of $100,000;

(b) whenever the Borrower requests an Advance that includes Bankers' Acceptances, each Non BA Lender shall, in lieu of accepting its *pro rata* amount of such Bankers' Acceptances, make available to the Borrower on the Drawdown Date a loan (a "**BA Equivalent Loan**") in Canadian Dollars and in an amount which would be equal to the BA Discount Proceeds of the Bankers' Acceptances (which are referred to herein collectively as "**Notional Bankers' Acceptances**") that such Non BA Lender would have been required to accept on the Drawdown Date if it were a BA Lender and provisions herein relating to BA Advances shall apply to such BA Equivalent Loans unless express provisions or the context otherwise requires. Each Non BA Lender shall also be entitled to deduct from the BA Equivalent Loan an amount equal to the applicable BA Fee that would have been applicable to the Notional Bankers' Acceptance had it been a Bankers' Acceptance;

(c) subject to the terms and conditions of this Agreement, each BA Lender agrees to accept drafts issued by the Borrower pursuant to this Section 2.18 and (except where the Borrower indicates in the Drawdown Notice, Rollover Notice or Conversion Notice that it will market same) purchase such Bankers' Acceptances discounted at the applicable BA Discount Rate. Each BA Lender shall provide the BA Discount Proceeds thereof to the Agent, less the BA Fee payable to such BA Lender. Each such BA Lender shall be entitled to sell, assign or otherwise transfer such Bankers' Acceptances to any third party without any notice to or the consent of the Borrower;

(d) each BA Lender and Non BA Lender, as applicable, shall transfer to the Agent for value on each relevant Drawdown Date, Rollover Date or Conversion Date immediately available Canadian Dollars in an aggregate amount equal to (i) in the case of a BA Lender, the BA Discount Proceeds (net of the applicable BA Fee in respect of such Bankers' Acceptances) of all Bankers' Acceptances accepted by it on such Drawdown Date, Rollover Date or Conversion Date and (ii) in the case of a Non BA Lender, the amount of each BA Equivalent Loan (net of the applicable BA Fee in respect of such BA Equivalent Loan) to be made by it on such Drawdown Date, Rollover Date or Conversion Date. The Agent may designate such offices in Toronto or Calgary as it may see fit for the purposes referred to in this Section 2.18.

The Agent shall make such amounts received by it from the BA Lenders as aforesaid available to the Borrower by crediting the Borrower's Account on the applicable Drawdown Date, Rollover Date or Conversion Date;

(e) the Borrower hereby authorizes each BA Lender to complete, stamp, hold, sell, rediscount or otherwise dispose of all Bankers' Acceptances accepted by it in accordance with the instructions provided by the Borrower hereunder or pursuant to the power of attorney referred to in Section 2.16; and

(f) if the Borrower requests that a BA Lender complete incomplete drafts pursuant to telephone instructions, such instructions are at the risk of the Borrower until confirmed in writing and the BA Lender shall not have any liability for any failure to carry out the same, in whole or in part, or for any error or omission in such instructions or the interpretation or execution thereof by such BA Lender.

2.19 Payment of Bankers' Acceptances and BA Equivalent Loans

The Borrower shall provide for payment to the Agent for the account of the applicable BA Lender or Non BA Lender (in the case of either the Operating Facility or the Capex Facility), the full Face Amount of each Bankers' Acceptance and each Notional Bankers' Acceptance on the earlier of (i) its date of maturity, and (ii) the date on which the Agent gives an Acceleration Notice regarding payment of the Obligations outstanding under the applicable Facility.

2.20 Deemed Advances - Bankers' Acceptances

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

2.21 Waiver

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

2.22 Degree of Care

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

2.23 Indemnity – Bankers' Acceptances

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

2.24 Obligations Absolute

The Obligations of the Borrower with respect to Bankers' Acceptances completed and sold under and in accordance with the terms of this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following circumstances:

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

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

2.25 Termination of BA Advances

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

(a) Adequate and reasonable means do not exist for ascertaining the BA Discount Rate applicable to a BA Advance; or

(b) The BA Discount Rate and the Bankers Acceptance Stamping Fee do not adequately reflect the cost to the Lenders of accepting or maintaining a Bankers' Acceptance,

then the Agent shall inform the Borrower and thereafter, the right of the Borrower to request BA Advances from the Lenders shall be and remain suspended until the Agent notifies the Borrower that the conditions causing such determination no longer exist. In the event the Agent so notifies the Borrower that the right to request BA Advances is suspended, each outstanding Advance of Banker's Acceptances and BA Equivalent Loans, as the case may be, shall be payable in full on their respective maturity dates in accordance with the provisions hereof or Rolled Over or Converted into any other form of Advance permitted by this Agreement.

2.26 Outstanding Obligations Under the Existing Advances

As of the Effective Date, the Borrower acknowledges and agrees that (i) the Existing Capex Facility Advances shall be deemed to be outstanding as Advances under the Capex Facility hereunder, (ii) the Existing Operating Facility Advances shall be deemed to be outstanding as Advances under the Operating Facility hereunder and (iii) the Existing Swingline Facility Advances shall be deemed to be outstanding as Advances under the Swingline Facility hereunder.

2.27 Permitted Lender Hedges

(a) At the time of entering into each Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement with a Lender or an Affiliate of a Lender, the Borrower shall be deemed to represent and warrant to such Lender or Affiliate of a Lender that such Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement, as the case may be, is a Hedge

Agreement entered into in compliance with the provisions of this Agreement. For greater certainty, such Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement, as the case may be, is a Permitted Lender Hedge hereunder and the Permitted Lender Hedge Obligations associated with such Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement, as the case may be, shall be secured by the Security with the other Obligations and shall be paid from Proceeds of Realization as contemplated by Section 11.3, regardless of whether the Borrower has breached Section 9.7(e) (but, for certainty, without in any manner lessening or relieving the Borrower from its obligation to comply therewith).

(b) At the time of entering into each Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement with a Lender or an Affiliate of a Lender, the Borrower shall be deemed to represent and warrant to such Lender or Affiliate of a Lender that such Interest Rate Hedge Agreement or Currency Exchange Hedge Agreement, as the case may be, is a Permitted Lender Hedge.

(c) The Compliance Certificate shall contain in reasonable detail all relevant information with respect to all Hedge Agreements entered into by the Borrower, and upon request from time to time by the Agent, the Borrower shall provide such information to the Agent.

(d) Nothing in this Agreement shall obligate any Lender (or any Affiliate of a Lender) to enter into a Hedge Agreement with the Borrower.

ARTICLE III
REPAYMENT AND PREPAYMENT

3.1 Termination of Commitment and Repayment of Borrowings – Swingline Facility

Unless the Swingline Lender has agreed in its sole and absolute discretion to an extension of the Extendible Period for the Operating Facility pursuant to Section 4.1 and such Extendible Period has been so extended, on the Operating Facility Maturity Date:

(a) any outstanding Obligations under the Swingline Facility shall be deemed to be outstanding under Tranche O-1 in accordance with the Proportionate Share of each Operating Lender under the Operating Facility; and

(b) the Swingline Facility shall be cancelled as a Tranche of the Operating Facility.

3.2 Reduction of Operating Facility Commitment and Repayment

Subject to other provisions of this Agreement, including without limitation Section 3.6, the Borrower shall repay to the Agent on behalf of the Operating Lenders all outstanding Obligations in respect of the Operating Facility by way of (i) one principal repayment in the amount of all Outstanding Principal under the Operating Facility due on the Operating Facility Maturity Date, and (ii) payments of accrued interest due and payable monthly in arrears on each Interest Payment Date, commencing at the end of the next full month following the date of Advance; until all outstanding Obligations under the Operating Facility have been repaid and satisfied in full. The Borrower shall ensure that all Bankers' Acceptances issued under the Operating Facility shall mature on or prior to the then current Operating Facility Maturity Date (without having regard for the giving of an Acceleration Notice).

3.3 Cancellation and Prepayment – Operating Facility

The Borrower may from time to time, upon giving at least five (5) Business Days prior written notice in the form of Schedule "D" attached hereto to the Agent, and paying all accrued and unpaid fees, as applicable, to the effective date of cancellation or reduction, permanently reduce, in whole or in part, any unused portion of the Operating Facility Commitment. Any such reduction will be in a minimum amount of $[redacted] (or the U.S. Dollar Equivalent Amount thereof) and reductions in excess thereof shall be in integral multiples of [redacted] (or the U.S. Dollar Equivalent Amount thereof). The Commitments of the Operating Lenders under the Operating Facility shall be reduced by an amount equal to the Proportionate Share of each Operating Lender of the amount of the Operating Facility Commitment cancelled or reduced. Any such reduction of the Operating Facility Commitment shall only be effective if on or prior to the last day of such five (5) Business Day notice period, the Borrower has:

(a) prepaid or otherwise reduced Advances outstanding to the Operating Lenders in respect of the Operating Facility in an amount equal to the amount by which Advances outstanding to the Operating Lenders in respect of the Operating Facility exceeds the amount of the Operating Lenders' Commitments under the Operating Facility immediately after the reduction of the Operating Facility provided for in such notice; and

(b) paid all accrued interest and other charges and fees in respect of the Advances being repaid or reduced as aforesaid.

Any such notice of cancellation is irrevocable and the amount of the Operating Facility Commitment so cancelled and reduced may not be reinstated hereunder. For clarity, the Borrower may not by reason of any such reduction or cancellation contemplated by this Section 3.3 pay any Bankers' Acceptances or BA Equivalent Loans prior to their respective maturity dates. Any payment made under this Section 3.3 shall be used by the Agent to repay unpaid accrued interest under the Operating Facility, if any, and then to repay Outstanding Principal under the Operating Facility. Concurrently with each such repayment, each Operating Lender's Commitment under the Operating Facility shall automatically be reduced by its Proportionate Share of each such repayment.

3.4 Reduction of Capex Facility Commitments and Repayment

(a) Subject to other provisions of this Agreement, including without limitation paragraph (b) below and Section 3.6, the Borrower shall repay to the Agent on behalf of the Capex Lenders all outstanding Obligations in respect of the Capex Facility by way of (i) one principal repayment in the amount of all Outstanding Principal under the Capex Facility due on the Capex Facility Maturity Date, and (ii) payments of accrued interest due and payable monthly in arrears on each Interest Payment Date, commencing at the end of the next full month following the date of Advance; until all outstanding Obligations under the Capex Facility have been repaid and satisfied in full. The Borrower shall ensure that all Bankers' Acceptances issued under the Capex Facility shall mature on or prior to the then current Capex Facility Maturity Date (without having regard for the giving of an Acceleration Notice).

(b) Upon the Capex Facility Term-Out Date, the Capex Facility Commitment shall be reduced at the end of each Fiscal Quarter by an amount equal to one-sixteenth ($1/16^{th}$) of the Capex Facility Commitment on the Capex Facility Term-Out Date (such amount referred to herein as the "**Capex Reduction Amount**"), with the first of such reductions to occur at the end of the Fiscal Quarter in which the Capex Facility Term-Out Date occurs. If, due to a reduction of the Capex Facility Commitment by the Capex Reduction Amount, the amount by which the Outstanding Principal under the Capex Facility at such time exceeds the Capex Facility

Commitment, the Borrower shall pay to the Agent any such excess Indebtedness under the Capex Facility in accordance with Section 3.6.

3.5 Cancellation and Prepayment – Capex Facility

The Borrower may from time to time, upon giving at least five (5) Business Days prior written notice in the form of Schedule "D" attached hereto to the Agent, and paying all accrued and unpaid fees, as applicable, to the effective date of cancellation or reduction, permanently reduce, in whole or in part, any unused portion of the Capex Facility Commitment. Any such reduction will be (i) in a minimum amount of U.S.$[redacted] and reductions in excess thereof shall be in integral multiples of U.S.[redacted] in the case of reductions in U.S. Dollars, or (ii) in a minimum amount of Cdn$1,000,000.00 and reductions in excess thereof shall be in integral multiples of Cdn[redacted] for reductions in Canadian Dollars. The Commitments of the Capex Lenders with respect to the Capex Facility shall be reduced by an amount equal to the Proportionate Share of each Capex Lender of the amount of the Capex Facility cancelled or reduced. Any such reduction of the Capex Facility Commitment shall only be effective if on or prior to the last day of such five (5) Business Day notice period, the Borrower has:

(a) prepaid or otherwise reduced Advances outstanding to the Capex Lenders in respect of the Capex Facility in an amount equal to the amount by which Advances outstanding to the Capex Lenders in respect of the Capex Facility exceeds the amount of the Capex Lenders' Commitments under the Capex Facility immediately after the reduction of the Capex Facility provided for in such notice;

(b) paid all accrued interest and other charges and fees in respect of the Advances being repaid or reduced as aforesaid; and

(c) made any payment required to be made in connection with the termination of all or any part of any Permitted Lender Hedge required in connection with such repayment of Advances made to the Borrower by the Capex Lenders.

Any such notice of cancellation is irrevocable and the amount of the Capex Facility Commitment so cancelled and reduced may not be reinstated hereunder. For clarity, the Borrower may not by reason of any such reduction or cancellation contemplated by this Section 3.5 pay any Bankers' Acceptances or BA Equivalent Loans prior to their respective maturity dates. Any payment made under this Section 3.5 shall be used by the Agent to repay unpaid accrued interest under the Capex Facility, if any, and then to repay Outstanding Principal under the Capex Facility on a *pro rata* basis in the inverse order of maturity on a Proportionate Share basis. Concurrently with each such repayment, each Capex Lender's Commitment under the Capex Facility shall automatically be reduced by its Proportionate Share of each such repayment.

3.6 Mandatory Prepayments

In addition to any other obligations to repay the Outstanding Principal hereunder, the Borrower shall also prepay Outstanding Principal under the Operating Facility and the Capex Facility as follows:

(a) The Borrower shall pay to the Swingline Lender any Swingline Reduction Amount in accordance with Section 2.4(m);

(b) The Borrower shall pay to the Agent any Outstanding Principal under the Operating Facility in excess of the Operating Facility Limit within one (1) Business Day after the occurrence of such excess;

(c) Subject to Section 3.8, upon the aggregate principal amount of U.S. Base Rate Advances under the Operating Facility exceeding the Operating Facility U.S. Sub-Limit, the Borrower shall (i) repay to the Agent the amount of such excess within one (1) Business Day after any such excess occurs or (ii) convert such excess to another type of Advance permitted under the Operating Facility and provide to the Agent within one (1) Business Day after any such excess occurs, a Conversion Notice to effect such Conversion;

(d) The Borrower shall pay to the Agent any Outstanding Principal under the Capex Facility in excess of the Capex Facility Limit within one (1) Business Day after such excess occurs;

(e) Subject to Section 3.8, upon the aggregate principal amount of U.S. Base Rate Advances under the Capex Facility exceeding the Capex Facility U.S. Sub-Limit, the Borrower shall (i) repay to the Agent the amount of such excess within one (1) Business Day after any such excess occurs or (ii) convert such excess to another type of Advance permitted under the Capex Facility and provide to the Agent within one (1) Business Day after any such excess occurs, a Conversion Notice to effect such Conversion;

(f) The Borrower shall pay to the Agent, within two (2) Business Days after receipt by the applicable Loan Party, all net proceeds from:

(i) any sale or disposition of assets by a Loan Party other than sales of inventory in the normal course of business of such Loan Party, except where (A) such proceeds are reinvested by a Loan Party in similar assets within 90 days after the date of making any such disposition or (B) such proceeds are reinvested by a Loan Party in accordance with a reinvestment plan approved in writing by the Required Lenders, which approval shall be in the absolute discretion of the Required Lenders; and provided that the first [redacted] per annum of such net proceeds otherwise payable under this Section 3.6(f) are exempt from payment under this Section 3.6(f);

(ii) insurance claims of the Loan Party, except where such proceeds are reinvested by a Loan Party in similar assets within 90 days after receipt of such insurance proceeds, and provided that the first [redacted] per annum of such net proceeds otherwise payable under this Section 3.6(f) are exempt from payment under this Section 3.6(f);

The payments required under paragraph (f) of this Section 3.6 shall be used by the Agent to repay unpaid accrued interest, if any, and then to repay Outstanding Principal under the Capex Facility in the inverse order of maturity on a Proportionate Share basis, and then to repay Outstanding Principal under the Operating Facility. For greater certainty, the payments required to be made in connection with the termination of any Permitted Lender Hedge required in connection with such repayment shall be payable with respect to repayments under this Section 3.6. Concurrently with each such repayment, each Applicable Lender's Commitment under the respective Facilities shall automatically be reduced by its Proportionate Share of each such repayment.

3.7 Evidence of Indebtedness

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

3.8 Repayment of Outstandings in Excess of Commitments Due to Exchange Rate Fluctuations

If the amount of Outstanding Principal (determined in Canadian Dollars, with all U.S. Base Rate Advances and Letter of Credit Advances denominated in other currencies being converted to the Equivalent Amount of Canadian Dollars) under a particular Facility or Tranche, solely due to exchange rate fluctuations, exceeds on any day the Operating Facility Limit or the Capex Facility Limit, as applicable, by an amount greater than three (3%) percent of such Operating Facility Limit or Capex Facility Limit, as applicable, the Borrower shall within five (5) Business Days after receiving notice thereof (i) repay such excess, (ii) provide cash collateral to be held by the Agent on behalf of the Applicable Lenders or (iii) otherwise reduce a portion of such Advances under the particular Facility or Tranche to the extent of the amount of the excess.

If the amount of the aggregate principal amount outstanding of U.S. Base Rate Advances under a particular Facility, solely due to exchange rate fluctuations, exceeds on any day the Operating Facility U.S. Sub-Limit or the Capex Facility U.S. Sublimit, as applicable, by an amount greater than three (3%) percent of such Operating Facility U.S. Sub-Limit or Capex Facility U.S. Sublimit, as applicable, the Borrower shall within five (5) Business Days after receiving notice thereof (i) repay such excess, (ii) provide cash collateral in U.S. Dollars to be held by the Agent on behalf of the Applicable Lenders, or (iii) reduce a portion of such U.S. Base Rate Advances under the particular Facility to the extent of the amount of the excess by way of Conversion or Rollover.

ARTICLE IV
EXTENSION

4.1 Extension of the Extendible Period

(a) **Request for Extension**. Not more than once in any calendar year, not more than twenty (24) months prior to the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, and not less than twelve (12) months prior to the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, the Borrower may request an Offer of Extension in respect of:

(i) both the Operating Facility Maturity Date and the Capex Facility Maturity Date (collectively, the "**Maturity Dates**"); and/or

(ii) the Capex Facility Term-Out Date,

from each Lender which has not previously refused (or been deemed to refuse) to extend the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, pursuant to any prior Request for an Offer of Extension (each, a "**Requested Lender**") for a further period to a specified Business Day which is not more than 364 days after the current Maturity Dates or Capex Facility Term-Out Date, as the case may be (such requested date being the "**New Maturity Date**") by delivering to the Agent an executed Request for an Offer of Extension, attaching, pursuant to Section 9.4(i), annual operating budgets for the next two succeeding Fiscal Years, including Capital Expenditure budgets and containing such information and detail as the Agent and Requested Lenders may reasonably request, with respect to BD Limited on a consolidated basis. The Agent shall forthwith upon receipt of such executed and complete Request for an Offer of Extension, and in any event within two (2) Business Days, notify each Requested Lender of such request by the Borrower (the date on which such notice is given being the "**Notification Date**"). Each Requested Lender shall advise the Agent as to whether or not it agrees to such request not later than ninety (90) days after the Notification Date; provided that in the event any Requested Lender does not so advise the Agent within such ninety (90) day period, such Requested Lender shall be deemed to have elected not to agree to such request. Within two (2) Business Days of the Agent having received from all Requested Lenders their respective decision or deemed decision with regard to the Request for an Offer of Extension, the Agent shall, unless the provisions of paragraph (c) below are applicable at that time, advise the Borrower which Lenders have agreed to extend the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, to the New Maturity Date pursuant to such Request for an Offer of Extension, and deliver to the Borrower an Offer of Extension (the date on which the Agent notifies the Borrower of such advice being the "**Decision Date**"). Any such Offer of Extension shall be open for acceptance by the Borrower for a period of ten (10) Business Days. Upon written notice being provided by the Borrower to the Agent accepting an outstanding Offer of Extension and agreeing to the terms and conditions specified therein, the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, shall be extended to the New Maturity Date.

(b) **Agreeing Lenders and Non-Agreeing Lenders**. For the purposes of this Section 4.1:

(i) a "**Non-Agreeing Lender**" means any Requested Lender which does not agree (or is deemed not to have agreed) to extend the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, pursuant to Section 4.1(a); and

(ii) an "**Agreeing Lender**" means any Requested Lender which agrees to extend the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, pursuant to Section 4.1(a).

(c) **Non-Extension**. If, in respect of any Request for an Offer of Extension, at least two Non-Agreeing Lenders hold in aggregate more than one- third (33⅓%) of the Commitments under the Facilities (in the case of a Request for an Offer of Extension to the Maturity Dates) or the Capex Facility (in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date), then:

(i) the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, for all Requested Lenders shall not be extended; and

(ii) the Borrower shall not be entitled to request any further extensions of the Maturity Dates or the Capex Facility Term-Out Date, as the case may be.

(d) **Extension of All Requested Lenders**. If all Requested Lenders agree to the Request for an Offer of Extension and the Borrower accepts such Offer of Extension pursuant to Section 4.1(a), then the Maturity Dates or the Capex Facility Term-Out Date, as the case may be, for all Requested Lenders shall be extended to the New Maturity Date pursuant to such request.

(e) **Payment or Replacement**. If, after any Request for an Offer of Extension pursuant to Section 4.1(a), the provisions of Section 4.1(c) and (d) are not applicable, then:

(i) each of the Agreeing Lenders shall have the right, but not the obligation, to purchase the Commitment under the Facilities (in the case of a Request for an Offer of Extension to the Maturity Dates) or the Capex Facility (in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date), of any Non-Agreeing Lender, and each of the Agreeing Lenders wishing to exercise its rights to purchase the Commitment under the Facilities (in the case of a Request for an Offer of Extension to the Maturity Dates) or the Capex Facility (in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date) of a Non-Agreeing Lender (each, a "**Purchasing Lender**") shall forthwith so notify the Borrower, the Agent and the other Lenders, and such Purchasing Lender shall thereupon be obligated to purchase not less than the thirtieth (30th) day after the Decision Date an amount of such Commitment under the Facilities (in the case of a Request for an Offer of Extension to the Maturity Dates) or the Capex Facility (in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date), equal to the Commitment of the Non-Agreeing Lender under the Facilities (in the case of a Request for an Offer of Extension to the Maturity Dates) or the Capex Facility (in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date), multiplied by such Purchasing Lender's Proportionate Share of the applicable Facilities or Facility over the aggregate of all Purchasing Lenders' Proportionate Share of the Applicable Facilities or Facility, or as otherwise agreed to by the Borrower and all Purchasing Lenders. The Non-Agreeing Lender, the Purchasing Lender(s), the Agent, the Borrower and each of the other Lenders, if any, shall forthwith duly execute and deliver any necessary documentation to give effect to such purchase, whereupon the Non-Agreeing Lender shall, as of the effective date thereof, be released from its obligations to the Borrower as a Lender or a Capex Lender, as the case may be, hereunder and under the other Credit Documents arising subsequent to such date; and if any Non-Agreeing Lender has no Obligations as either an Operating Lender or a Capex Lender hereunder and under the other Credit Documents arising subsequent to such date, such Non-Agreeing Lender shall, as of the effective date thereof, be released from all its obligations to the Borrower hereunder and under the other Credit Documents arising subsequent to such date; or

(ii) if none of the Agreeing Lenders exercises its rights under Section 4.1(e)(i), the Borrower may, but is not obligated to:

(A) so long as there exists no Event of Default which is continuing, repay all Obligations under the applicable Facilities or Facility owing hereunder to any such Non-Agreeing Lender on or prior to the thirtieth (30th) day after the Decision Date, and upon such payment any such Non-Agreeing Lender shall cease to be an Lender or Capex Lender, as the case may be, hereunder and each such Non-Agreeing Lender's Commitment under the Facilities or Capex Facility, as applicable, shall be terminated and the Total Commitment reduced accordingly; or

(B) arrange for a replacement lender (or lenders) (which may be one or more Lenders) to replace each Non-Agreeing Lender's Advances and its Commitment under the applicable Facilities or Facility; provided that any such replacement lender (or lenders) (if not already a Lender hereunder) shall have been approved by the Agent (acting reasonably), shall qualify as a permitted assignee and all other requirements hereunder shall have been satisfied on or prior to the thirtieth (30^{th}) day after the Decision Date, and in respect of which the Lenders shall do all things and make all such adjustments as are reasonably necessary to give effect to any such replacement.

(f) **Partial Extension**. If, with respect to any Request for an Offer of Extension, the provisions of Sections 4.1(c) and (d) are not applicable, and if after any replacements or repayments under Section 4.1(e) there are remaining Non-Agreeing Lenders, then:

(i) in the case of a Request for an Offer of Extension to the Maturity Dates:

(A) the Maturity Dates for the Agreeing Lenders shall be extended to the New Maturity Date pursuant to the Request for an Offer of Extension; and

(B) for those Non-Agreeing Lenders, the Maturity Dates of all such Non-Agreeing Lenders shall not be extended, and the Borrower shall not be entitled to request any further extensions to the Maturity Dates from such Non-Agreeing Lenders; and

(ii) in the case of a Request for an Offer of Extension to the Capex Facility Term-Out Date, the Capex Facility Term-Out Date shall not be extended.

(g) **Independent Decision**. The Borrower understands that consideration of any Request for an Offer of Extension constitutes an independent credit decision which each Lender retains the absolute and unfettered discretion to make, and that no commitment in this regard is hereby given by any Lender.

(h) **Default or Event of Default**. Notwithstanding the foregoing, the Borrower shall not be entitled to accept any offer made by the Agent on behalf of the Agreeing Lenders to extend the Maturity Date or the Capex Facility Term-Out Date, as the case may be, if a Default or Event of Default has occurred and is continuing, unless such Default or Event of Default is waived by all of the Agreeing Lenders; provided that any such waiver shall be effective only for the purposes of this Section 4.1.

(i) **Successive Extensions**. This Section 4.1 shall apply from time to time to permit successive extensions of the Maturity Dates and the Capex Facility Term-Out Date, as the case may be, if and for so long as the Agreeing Lenders have agreed to all prior extensions in accordance with the foregoing, as applicable.

ARTICLE V
INTEREST RATES AND FEES

5.1 Interest on Prime Rate Advances

The Borrower shall pay to the Swingline Lender (in the case of Prime Rate Advances under the Swingline Facility), or to the Agent on behalf of each Applicable Lender (in the case of Prime Rate Advances under Tranche O-1 or the Capex Facility) interest on each Prime Rate Advance in Canadian Dollars at a rate per three hundred sixty-five (365) day period or three hundred sixty-six (366) day period, as applicable, equal to the Prime Rate plus the Applicable Margin. A change in the Prime Rate will simultaneously cause a corresponding change in the interest payable for a Prime Rate Advance and a change in the Applicable Margin will cause a change in the interest payable as provided for in the definition of "Applicable Margin". Such interest shall be calculated monthly in arrears and be payable on each Interest Payment Date for the period commencing on and including the immediately prior Interest Payment Date up to and including the last day prior to the Interest Payment Date on which such interest is to be paid and shall be calculated on the basis of the actual number of days elapsed in a year of three hundred sixty-five (365) days or three hundred sixty-six (366) days, as applicable. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 5.1 are equivalent are the rates so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by three hundred sixty-five (365) or three hundred sixty-six (366), as applicable.

5.2 Interest on U.S. Base Rate Advances

The Borrower shall pay to the Agent on behalf of each Applicable Lender interest on each U.S. Base Rate Advance in U.S. Dollars at a rate per three hundred sixty-five (365) day period or three hundred sixty-six (366) day period, as applicable, equal to the U.S. Base Rate plus the Applicable Margin. A change in the U.S. Base Rate will simultaneously cause a corresponding change in the interest payable for a U.S. Base Rate Advance and a change in the Applicable Margin will cause a change in the interest payable as provided for in the definition of "Applicable Margin". Such interest shall be calculated monthly in arrears and be payable on each Interest Payment Date for the period commencing on and including the immediately prior Interest Payment Date up to and including the last day prior to the Interest Payment Date on which such interest is to be paid and shall be calculated on the basis of the actual number of days elapsed in a year of three hundred sixty-five (365) days or three hundred sixty-six (366) days, as applicable. The annual rates of interest to which the rates determined in accordance with the foregoing provisions of this Section 5.2 are equivalent are the rates so determined multiplied by the actual number of days in a period of one year commencing on the first day of the period for which such interest is payable and divided by three hundred sixty-five (365) or three hundred sixty-six (366).

5.3 BA Fees

The Borrower shall pay to the Agent on behalf of each Applicable Lender (in the case of BA Advances under the Operating Facility or the Capex Facility) BA Fees in Canadian Dollars forthwith upon the acceptance by each BA Lender of each Bankers' Acceptance, or a Non BA Lender making a BA Equivalent Loan, at a rate per three hundred sixty-five (365) or three hundred sixty-six (366), as applicable, day period equal to the Applicable Margin, calculated on the Face Amount of each such Bankers' Acceptance or BA Equivalent Loan and on the basis of the number of days in the term of such Bankers' Acceptance or BA Equivalent Loan divided by three hundred sixty-five (365) or three hundred sixty-six (366), as applicable. All fees payable pursuant to this Section 5.3 on any date in respect of any issuance of Bankers' Acceptances or BA Equivalent Loans shall be calculated by the Agent and be payable by the Borrower based on the Applicable Margin in effect on such date; provided that if during the term of any such Bankers' Acceptance or BA Equivalent Loan a change in the Applicable Margin occurs, the fees paid by the Borrower in respect of such Bankers' Acceptance or BA Equivalent Loan shall be adjusted, effective at the time determined pursuant to the definition of "Applicable Margin", to reflect the Applicable Margin for the remaining term of the Bankers' Acceptance or BA Equivalent Loan, and the Borrower, in the case of an increase in the Applicable Margin, shall forthwith after receipt of a notice from the Agent, as applicable, make such payments as are necessary to reflect such change, and the BA Lenders or Non BA Lenders, as the case may be, in the case of a decrease in the Applicable Margin, shall credit any amount which would otherwise be refundable to the Borrower against amounts in respect of interest or fees accruing hereunder in relation to the Borrower.

5.4 Letter of Credit Fees

The Borrower shall pay to the Swingline Lender (in the case of Letter of Credit Advances under the Swingline Facility) or to the Agent (in the case of Letter of Credit Advances under Tranche O-1 or the Capex Facility) the following fees in respect of each Letter of Credit issued by the Swingline Lender or the Issuing Bank, as the case may be, hereunder:

(a) any applicable fees pursuant to Section 2.13(i) or Section 2.14(h);

(b) in respect of each Letter of Credit, an administrative fee equal to [redacted]) of the face amount of such Letter of Credit (without regard to the number of days to expiry of the Letter of Credit), payable to the Issuing Bank (for its own account) at the time of issuance of the said Letter of Credit by the Issuing Bank, provided however that this administrative fee shall not be payable if such Letter of Credit is issued by the Swingline Lender under the Swingline Facility;

(c) on the date of issue of each Letter of Credit and thereafter on the first day of each Fiscal Quarter until the expiry of such Letter of Credit, a fee payable in Canadian Dollars, equal to the greater of (i) $150, and (ii) the amount calculated by multiplying the stated amount, if the Letter of Credit is issued in Cdn Dollars, or the Equivalent Amount in Cdn Dollars of the stated amount if such Letter of Credit is issued in a currency other than Cdn Dollars, of such Letter of Credit by the applicable LC Rate and then multiplying the result by a fraction, (A) the numerator of which is the number of days to elapse from and including the date of issue to and including the last day of the then current Fiscal Quarter of the Borrower and thereafter, the lesser of the number of days in the then current Fiscal Quarter of the Borrower and the number of days until the expiry thereof, and (B) the denominator of which is the number of days in the calendar year in question; and

(d) on the date of each amendment of each Letter of Credit, a fee based on the then standard charges of the Operating Lender.

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

5.5 Interest on Overdue Amounts

Notwithstanding any other provision of this Agreement, in the event that any amount due hereunder (including any interest payment) is not paid when due (whether by acceleration or otherwise), the Borrower shall and hereby agrees to pay to the Swingline Lender or to the Agent for the benefit of the Lenders, as applicable, interest on such unpaid amount (including interest on interest), if and to the fullest extent permitted by Applicable Law, from the date that such amount is due until the date that such amount is paid in full (but excluding the date of such payment if the payment is made before 10:00 a.m. at the place of payment on the date of such payment), and such interest shall accrue daily, be calculated and compounded on the last Business Day of each calendar month and be payable in the currency of the relevant Advance on demand, as well after as before maturity, default and judgment, at a rate per annum in respect of the Facilities that is equal to (i) the U.S. Base Rate plus the Applicable Margin at Level IV for a U.S. Base Rate Advance plus two percent (2.0%), for overdue amounts in U.S. Dollars, or (ii) the Prime Rate plus the Applicable Margin at Level IV for a Prime Rate Advance plus two percent (2.0%) for overdue amounts in Cdn Dollars or any other currency (with all overdue amounts in currencies other than U.S. Dollars or Cdn Dollars being covered to the Equivalent Amount of Cdn Dollars). The Borrower hereby waives, to the fullest extent it may do so under Applicable Law, any provisions of Applicable Law, including specifically the *Interest Act* (Canada) or the *Judgment Interest Act* (Alberta), which may be inconsistent with this Agreement.

5.6 Standby Fees

The Borrower shall pay standby fees to the Agent on behalf of each Applicable Lender (in respect of the Operating Facility and the Capex Facility), as applicable, calculated in arrears on the last Business Day of each Fiscal Quarter commencing with the last Business Day of the Fiscal Quarter in which the Effective Date occurs, and payable quarterly in arrears on the third Business Day of the next following Fiscal Quarter thereafter. Each payment of standby fees shall be calculated for the period commencing on and including the Effective Date or the last date on which such standby fees were payable hereunder, as the case may be, up to and including the last day of the Fiscal Quarter for which such standby fees are to be paid and shall be in an amount equal to the Standby Fee Rate in effect on each day during such period of calculation multiplied by the undrawn portion of the Operating Facility Commitment and the Capex Facility Commitment, as the case may be, for each day in the period of the calculation from the amount of such Lender's Total Commitment in effect on each such day. Such standby fees shall be calculated on a daily basis and on the basis of a 365 day year or 366 day year, as applicable. For purposes of calculating standby fees payable pursuant to this Section 5.6, the amount of Advances outstanding from time to time in any major currency other than Cdn Dollars on each day of a month during the period for which such standby fees are payable shall, for the purposes of determining an Equivalent Amount on such day, be notionally converted to the Equivalent Amount in Canadian Dollars using the Bank of Canada noon (Toronto time) spot rate for converting such other major currency to Canadian Dollars effective on the first Business Day of that month for each day of the month during the period.

5.7 Maximum Rate Permitted by Law

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

5.8 Interest Generally

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

ARTICLE VI
SECURITY

6.1 Security

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

(a) a general security agreement from each Loan Party, mortgaging and charging to and in favour of the Agent all of its present and after acquired property, to be registered in first priority position subject only to Permitted Encumbrances at the personal property or other appropriate registry office in each applicable Relevant Jurisdiction;

(b) an unlimited Subsidiary Guarantee from each of BD Limited, each Partner and each Material Subsidiary, whereby it guarantees all Obligations of the Borrower to the Agent, the Lenders and the Hedge Providers;

(c) a first-ranking pledge by each Loan Party in favour of the Agent, in respect of the Securities of each other Loan Party registered in its name;

(d) assignments of insurance from each Loan Party with respect to all policies of insurance held by it, including without limitation all risks insurance, business interruption insurance and fire insurance over all inventory and equipment, naming the Agent as first loss payee;

(e) acknowledgement of security from each of the Loan Parties regarding, among other things, the continuing application of the Security to and in favour of the Agent, the Lenders and the Hedge Providers; and

(f) such other security as may be reasonably required by the Agent and the Lenders from time to time,

together with an opinion in respect of such documents from Borrower's Counsel, all in form and substance satisfactory to the Agent and Lenders' Counsel, each acting reasonably.

6.2 Guarantees and Security

Within 30 days of a Subsidiary becoming a Material Subsidiary or a Person becoming a Partner, the Borrower shall cause to be executed and delivered to the Agent by each such Material Subsidiary or Partner the documents described in Sections 6.1(a), (b), (c) (if applicable), and (d) (if applicable), in each case together with such other documents, certificates and opinions as the Agent may reasonably request. Additionally, in the event that (i) the total assets, on a consolidated basis, of the Loan Parties do not constitute at least [redacted] of the total assets, on a consolidated basis, of BD Limited, (excluding the assets of the Dene LP) or (ii) the total revenue, on a consolidated basis (calculated on its preceding consecutive four Fiscal Quarter period) of the Loan Parties does not constitute at least [redacted] of the consolidated revenue of BD Limited (excluding the revenue of the Dene LP) for the preceding consecutive four Fiscal Quarter period, the Borrower shall advise the Agent of such facts and shall, within 30 days of notice thereof from the Agent, designate further Material Subsidiaries and cause to be executed and delivered to the Agent by such new Material Subsidiaries the documents described in Sections 6.1(a), (b), (c) (if applicable), (d) (if applicable), in each case together with such other documents, certificates and opinions as the Agent may reasonably request.

6.3 Continuing Guarantees and Security

The Subsidiary Guarantees and other Security shall for all purposes be treated as separate and continuing guarantees and security and shall be deemed to have been given in addition to and not in place of any other guarantee or any security now held or hereafter acquired by the Agent, any Lender or any Hedge Provider. No item or part of any Subsidiary Guarantee or any Security shall be merged or be deemed to have been merged in or by any simple contract debt or any judgment, and any realization of or steps taken or pursuant to any Subsidiary Guarantee or any other Security shall be independent of and not create a merger with any other right available to the Agent, any Lender or any Hedge Provider under this Agreement, any other Subsidiary Guarantee or Security, or any other Credit Document held by it or them or at law or in equity. All rights and benefits granted to the Agent under the Security shall also be for the benefit of each of the Lenders and the Hedge Providers. For greater certainty, the Security shall continue to guarantee and secure all indebtedness, liabilities and obligations owing under Currency Exchange Hedge Agreements and Interest Rate Hedge Agreements if at the time the Borrower enters into such Currency Exchange Hedge Agreements and Interest Rate Hedge Agreements, the counterparty thereto is a Person that is a Lender or an Affiliate of a Lender and thereafter such Person (or its Affiliates, as applicable) ceases to be a Lender hereunder.

6.4 Dealing with Subsidiary Guarantees and Security

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

6.5 Effectiveness

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

6.6 Undertaking to Grant Additional Security

Subject to Section 6.7, if the Agent requests, acting reasonably, the Borrower shall forthwith grant or cause to be granted to the Agent, for and on behalf of the Lenders and the Hedge Providers, such additional security, including a first fixed Security Interest (subject only to Permitted Encumbrances which under Applicable Law rank in priority thereto) in such Property of any Loan Party not previously subject to a fixed Security Interest as the Agent shall determine, as security for all present and future Obligations of the Loan Parties, or any of them, under or with respect to this Agreement and the other Credit Documents.

6.7 Limitation

The rights of the Agent and the Lenders and the Hedge Providers under Section 6.6 shall be subject to, where applicable, the receipt of any consents that may be required pursuant to Applicable Law or from contractual parties prior to any Loan Party granting a Security Interest referred to therein. The Borrower shall use all reasonable efforts (which shall include the expenditure of funds) to obtain such consents.

6.8 Release and Amendment of Security

During the term of this Agreement, the Agent shall not discharge, surrender, amend or otherwise modify any Security without the prior written consent of all of the Lenders; provided that:

(a) the Agent may discharge Security in accordance with Sections 11.1(c);

(b) if all of the Obligations to the Lenders and the Hedge Providers have been indefeasibly repaid, paid, satisfied and discharged, as the case may be, in full and the Operating Facility and the Capex Facility have been fully cancelled, then, subject to Section 6.12, the Security shall be released and discharged by the Agent and the Lenders; and

(c) the Agent shall, concurrently with completion of the Arrangement, discharge Security in accordance with Section 6.13 hereof.

The Agent, on behalf of the Lenders, releases and discharges the July 31, 2008 specific assignment of lease by the Borrower in favour of the Lenders.

6.9 Registrations and Renewals

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

6.10 Permitted Encumbrances and Permitted Indebtedness

None of the fact that:

(a) the Loan Parties are permitted to create or suffer to exist any Permitted Encumbrance or Permitted Indebtedness;

(b) any representation, warranty or covenant contained herein may make an exception for the existence of Permitted Encumbrances or Permitted Indebtedness; or

(c) the Security Interests created pursuant to the Credit Documents are stated to be subject to, or are not required to rank in priority to, Permitted Encumbrances,

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

6.11 Permitted Lender Hedge Documentation

At the time the Borrower enters into a Permitted Lender Hedge, the Borrower shall execute and deliver to the applicable Hedge Provider an ISDA Master Agreement or alternate agreement in the form required by such Hedge Provider, together with all such other confirmation, agreements and undertakings that such Hedge Provider may reasonably require.

6.12 Permitted Lender Hedge Obligations

The following provisions shall apply in respect of the Permitted Lender Hedge Obligations and in the event of any conflict between the provisions of this Section 6.12 with any other provisions of this Agreement in respect of Permitted Lender Hedge Obligations, the provisions of this Section 6.12 shall govern and prevail:

(a) In the event a Hedge Provider or the Lender affiliated with a Hedge Provider is no longer a Lender but there are outstanding Permitted Lender Hedge Obligations owed to such former Lender or the Affiliate of such former Lender, then such Permitted Lender Hedge Obligations shall continue to be secured by the Security;

(b) Any matter or thing done or omitted to be done by a Lender under or in respect of this Agreement, the other Credit Documents, the Security and in respect of any transactions contemplated thereby shall be binding upon any Hedge Provider that is an Affiliate of such Lender;

(c) Each Lender does hereby indemnify and save the other Lenders and the Agent harmless from any and all claims, demands, actions or matter of actions that a Hedge Provider that is an Affiliate of such Lender may have against the other Lenders and the Agent for any matter or thing done or omitted to be done by any of them under and in respect of this Agreement, the other Credit Documents, the Security and any transactions contemplated thereby;

(d) For better certainty, any reference in this Agreement to the Permitted Lender Hedge Obligations of a Lender shall include the Permitted Lender Hedge Obligations of the Lender's Affiliate, if any;

(e) In the event (i) a Hedge Provider or the Lender affiliated with a Hedge Provider is no longer a Lender but there are outstanding Permitted Lender Hedge Obligations owed to such former Lender or Affiliate of such former Lender, and (ii) the Obligations (other than the Permitted Lender Hedge Obligations) have been fully paid and satisfied and the Operating Facility and the Capex Facility have been cancelled, then the Agent may assign, transfer and convey to such Hedge Provider all of its rights, benefits and entitlements under this Agreement and the Security as Agent for the purpose of securing the outstanding Permitted Lender Hedge Obligations. Any such assignment, transfer or conveyance under this Subsection 6.12(e) shall be without recourse to the Agent; and

(f) For better certainty, the assignee of an assignment made under subsection (e) of this Section 6.12 shall be substituted in place and instead of the assignor as the Agent for the purposes of this Agreement and the Security.

6.13 Release of Income Fund and Commercial Trust Security

The Agent and each of the Lenders hereby acknowledges and agrees that the Security granted by each of the Income Fund and the Commercial Trust pursuant to the Original Credit Agreement shall be released, concurrently with completion of the Arrangement and subject to Section 7.1(c) hereof, and the Agent shall take all reasonable action required to effect such discharges at the cost of the Borrower.

6.14 Nortex Acquisition - Section 6.1(c) Security

The Agent and each of the Lenders hereby acknowledges and agrees, and the Borrower covenants and agrees to and in favour of the Agent and each of the Lenders that, the Borrower shall cause the holders of all of the Securities of Nortex to deliver the Security contemplated by Section 6.1(c) hereof within fifteen (15) Business Days after completion of the Nortex Acquisition as contemplated by Section 7.2 hereof.

ARTICLE VII
DISBURSEMENT CONDITIONS

7.1 Conditions Precedent to Effectiveness of Agreement

This Agreement shall become effective and the "Advances" under the Original Credit Agreement shall be continued as Advances hereunder at such time (the "**Effective Date**") as the following conditions precedent have been satisfied (unless otherwise waived by the Lenders, in their discretion):

(a) **Arrangement**: the Arrangement shall have been completed, in accordance with the Plan of Arrangement in all material respects, including without limitation, the dissolution of the Income Fund and the Commercial Trust in accordance with the Arrangement.

(b) **Receipt of Credit Documents (Original Credit Agreement)**: the Agent shall have received for and on behalf of the Lenders, each in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably, the following documents (all of which the Agent acknowledges receipt of under the Original Credit Agreement):

(i) a copy of the Original Credit Agreement duly executed and delivered by the Borrower and the other Loan Parties party thereto;

(ii) all operation of account and central collection account documentation relating to the Borrower's Account as BMO may reasonably require; and

(iii) all operation of account and central collection account documentation relating to the Agent's Account as the Agent may reasonably require.

(c) **Receipt of Credit Documents – Arrangement Matters**: the Agent shall have received for and on behalf of the Lenders, each in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably, the following documents:

(i) a copy of all Government Authorizations required in connection with the Arrangement, including, without limitation, the conditional approval to the listing of the Common Shares issuable or to be made issuable pursuant to the Arrangement on the Toronto Stock Exchange, as contemplated by the Information Circular;

(ii) a copy of this Agreement duly executed and delivered by the Borrower and the other Loan Parties, including BD Limited;

(iii) a copy of each other Credit Document being delivered in connection herewith (including the applicable Security) duly executed and delivered by the Borrower, BD Limited, each Partner and each Material Subsidiary, as applicable;

(iv) a certificate of status in respect of each Loan Party that is a corporation, issued under the laws of each applicable Relevant Jurisdiction in which it carries on any material business;

(v) a partnership search or similar document in respect of each Loan Party that is a partnership or limited partnership, issued under the laws of each applicable Relevant Jurisdiction in which it carries on any material business;

(vi) a certified copy of the Constating Documents of each Loan Party;

(vii) a certified copy of a directors' resolution of BDGI (in its own capacity and in its capacity as the general partner of the Borrower) and each Material Subsidiary and Partner, with respect to the authorization, execution and delivery of the Credit Documents to which each is a party being delivered in connection herewith;

(viii) a certified copy of a directors' resolution of BD Limited with respect to the authorization, execution and delivery of the Credit Documents to which it is a party being delivered in connection herewith;

(ix) a favourable opinion of Borrower's Counsel, addressed to the Agent, each Lender and Lenders' counsel, relating to all matters considered relevant, including existence and capacity of the Loan Parties, and the due authorization, execution, delivery and enforceability of the Credit Documents to which each is a party being delivered in connection herewith; and

(x) such other documents, certificates, opinions and agreements as are reasonably required to confirm the completion and satisfaction of the foregoing which the Agent and the Lenders may reasonably request.

(d) **Review of Other Documents – September 30, 2009 Certificates**: the Agent and the Lenders shall have reviewed and found to be satisfactory the following:

(i) a Receivables Certificate completed by the General Partner of the Borrower with respect to the Fiscal Quarter ending September 30, 2009; and

(ii) a Capex Borrowing Base Certificate completed by the General Partner of the Borrower with respect to the Fiscal Quarter ending September 30, 2009.

(e) **Review of Other Documents - Miscellaneous**: the Agent and the Lenders shall have reviewed and found to be satisfactory the following:

(i) certificates of insurance evidencing the existence and validity of all policies of insurance for the Borrower, including without limitation all risks insurance, business interruption insurance and fire insurance over all inventory and equipment;

(ii) a favourable opinion from Lenders' Counsel addressed to the Agent and each Lender as to such matters as may be reasonably required to be addressed by such parties;

(iii) upon completion of the Arrangement, a current organizational chart with respect to the Loan Parties; and

(iv) such other documents, certificates, opinions and agreements as are reasonably required to confirm or establish the completion or satisfaction of the foregoing which the Agent and the Lenders may reasonably request.

(f) **Due Diligence - Arrangement**: the Lenders shall have completed and be satisfied with their financial, business, environmental, tax and legal due diligence review of the Loan Parties and on all aspects of the Arrangement.

(g) **Security Interests**: all Security Interests pursuant to the Security set forth in Section 6.1 shall have been duly registered in each applicable Relevant Jurisdiction as required by the Agent and Lender's Counsel.

(h) **Fees**: the Borrower shall have paid all fees and expenses then due in respect of this Agreement.

7.2 Conditions– Nortex Acquisition

The consent of each Lender to the completion of the Nortex Acquisition is subject to the satisfaction of the following conditions concurrently with or immediately forthwith after the completion of the Nortex Acquisition:

(a) **Nortex Acquisition**: the Nortex Acquisition shall have been completed, in accordance with the Nortex Acquisition Agreement, in all material respects;

(b) **Due Diligence**: the Lender shall have completed and be satisfied with their financial, business, environmental, tax and legal due diligence review of the Nortex Acquisition and Nortex;

(c) **Credit Agreement Joinder**: Nortex shall have executed and delivered to and in favour of the Agent, on behalf of the Lenders, a joinder agreement or such other documentation as the Agent, on behalf of the Lenders, may require whereunder Nortex acknowledges and agrees that it is bound by the terms of this Agreement;

(d) **Credit Documents – Nortex Acquisition**: the Agent shall have received, for and on behalf of the Lenders, each in full force and effect and in form and substance satisfactory to the Lenders, acting reasonably, the following:

(i) written confirmation from the Borrower that the Nortex Acquisition has been completed without material amendment to, and on and subject to, the terms of the Nortex Acquisition Agreement;

(ii) a copy of all Government Authorizations required in connection with the Nortex Acquisition, if any;

(iii) a copy of each other Credit Document being delivered in connection herewith (including the applicable Security, subject to Section 6.14) duly executed and delivered by Nortex;

(iv) a certificate of status in respect of Nortex, issued under the laws of each applicable Relevant Jurisdiction in which it carries on any material business;

(v) a certified copy of the Constating Documents of Nortex;

(vi) a certified copy of a directors' resolution of Nortex with respect to the authorization, execution and delivery of the Credit Documents to which it is a party being delivered in connection herewith;

(vii) a favourable opinion of legal counsel for Nortex, addressed to the Agent, each Lender and Lenders' counsel, relating to all matters considered relevant, including existence and capacity of Nortex, and the due authorization, execution, delivery and enforceability of the Credit Documents to which it is a party being delivered in connection herewith;

(viii) payoff letters as to the outstanding amount of any debt or financial obligation of Nortex, which payoff letters shall include an agreement of the creditor that any Security Interest securing such obligation shall be terminated or released promptly after receipt of the amounts set forth in such payoff letters regarding Nortex;

(ix) updated materials in compliance with Section 8.1(m), (w), (x), (y), (z) and (aa); and

(x) such other documents, certificates, opinions and agreements as are reasonably required to confirm the completion and satisfaction of the foregoing which the Agent and the Lenders may reasonably request.

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

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

(a) **No Default**: no Default or Event of Default has occurred and is continuing on the Drawdown Date, or would result from the making of any such Advance;

(b) **Representations and Warranties**: the representations and warranties contained in Article VIII and in any other Credit Document shall be true and correct as if made on and as of the Drawdown Date and the date of any Compliance Certificate;

(c) **Delivery of Notice**: the Borrower shall have delivered to the Agent a duly completed Drawdown Notice;

(d) **No Material Adverse Effect**: since the date of delivery by the Borrower to the Agent of the most recent Compliance Certificate, there shall not have occurred any change, development or event relating to the Borrower and its Material Subsidiaries which would reasonably be expected to have a Material Adverse Effect; and

(e) **Other**: all other terms and conditions of this Agreement upon which a Borrower may obtain an Advance are fulfilled, including the aggregate amount of any proposed Advance when added to the then outstanding Obligations under each Facility, as applicable, shall not exceed the respective Facility Commitment,

provided that the condition precedent set out in paragraph (c) above shall not apply to (i) Advances in respect of Overdrafts or (ii) MasterCard Advances. In addition, with respect to entering into any Permitted Lender Hedge, the Borrower shall comply with Section 6.11.

7.4 Conditions Precedent to Rollovers and Conversions

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

(a) **No Default**: no Default or Event of Default has occurred and is continuing on the Rollover Date or the Conversion Date, as applicable, or would result from the making of any such Advance; and

(b) **Delivery of Notice**: other than in the case of a deemed Rollover or a deemed Conversion, the Borrower shall have delivered to the Agent a duly completed Rollover Notice or Conversion Notice, as applicable.

7.5 Waiver

The conditions in Sections 7.1, 7.2, 7.3 and 7.4 are inserted for the sole benefit of the Lenders, and may be waived by the Agent upon the instructions of all of the Lenders in whole or in part (with or without terms or conditions) in respect of any particular Advance.

ARTICLE VIII
REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties

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

(a) **Existence of the Borrower**: the Borrower is a limited partnership duly formed and recognized, and validly subsisting and in good standing under the laws of Alberta, and is duly registered and qualified as an extra-provincial limited partnership under the laws of each other jurisdiction in Canada in which the nature of any business transacted by it or the character of any properties and assets owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification does not have a Material Adverse Effect; as of the date hereof, the General Partner is the general partner, and BD Limited is the limited partner of the Borrower;

(b) **Existence of Partnership Entities**: each Loan Party other than the Borrower that is a partnership, if any, is duly formed, recognized and organized, validly subsisting and in good standing under the laws of its jurisdiction of formation or continuance, as the case may be, and is duly registered and qualified as an extra-provincial partnership under the laws of each other jurisdiction in Canada in which the nature of any business transacted by it or the character of any properties and assets owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification does not have a Material Adverse Effect;

(c) **Existence of Corporate Entities**: each Loan Party that is a corporation is duly incorporated, amalgamated or continued, and is duly organized, validly subsisting and in good standing under the laws of its jurisdiction of incorporation, amalgamation or continuance, as the case may be, and is duly registered and qualified as an extra-provincial corporation under the laws of each other jurisdiction in Canada in which the nature of any business transacted by it or the character of any properties and assets owned or leased by it requires such registration and qualification, except to the extent that failure to maintain such registration or qualification does not have a Material Adverse Effect;

(d) **Power and Capacity**: each Loan Party has full partnership or corporate power and capacity to own its properties and assets and conduct its business as presently conducted, to grant security over its Property, and (in the case of the Borrower) to borrow money and perform its obligations hereunder, and (in the case of BDGI) to act as the general partner of the Borrower pursuant to the Partnership Agreement;

(e) **Authorization**: the execution, delivery and performance by the Loan Parties of the Credit Documents to which each is a party has been duly authorized by all necessary partnership, corporate or trust action, as the case may be, and are within its partnership, corporate or trust power and capacity, as the case may be;

(f) **Execution**: each Credit Document to which any Loan Party is a party has been duly executed and delivered by such Loan Party, as applicable;

(g) **Binding Obligations**: each Credit Document to which any Loan Party is a party is a legal, valid and binding obligation enforceable against such Loan Party, as applicable, in accordance with its respective terms, except as enforceability may be limited by general principles of equity and by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally;

(h) **No Legal Bar or Resultant Lien**: the execution, delivery and performance by each Loan Party of the Credit Documents to which it is a party will not violate any provision of Applicable Law or of its respective Constating Documents, and will not result in a breach of or constitute a default or require any consent under, or result in the creation of any Security Interest (other than Permitted Encumbrances) upon any of its Property pursuant to any indenture or other agreement or instrument to which it is a party or by which it or its property may be bound or affected; and the execution, delivery and performance by each Loan Party of the Credit Documents to which it is a party does not require any governmental action, license, consent or approval of or notice to or filing with any Governmental Authority which has not been obtained;

(i) **Title to Assets**: subject to Permitted Title Defects, each Loan Party has good and marketable title to all of its Property free and clear of all claims and Security Interests, other than Permitted Encumbrances;

(j) **Default of Other Contracts**: no Loan Party is in material breach or material default of, nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a breach or default under, any Material Leases to which it is a party, except to the extent any such breach or default would not reasonably be expected to have a Material Adverse Effect;

(k) **Ownership of Material Subsidiary Securities**: BD Limited is, directly or indirectly, the legal and beneficial owner of all of the Securities in each Material Subsidiary;

(l) **Ownership of Borrower**: BD Limited and the General Partner are the only legal and beneficial owners of the Securities of the Borrower, and the General Partner is the only general partner of the Borrower;

(m) **Material Subsidiaries**: on the date hereof, there are no Material Subsidiaries other than BDGI, 137Co, BDESI, and Boxx;

(n) **BDLI**: BDLI does not carry on the Business and is not a Material Subsidiary;

(o) **Litigation**: there are no material actions, suits or proceedings (whether or not purportedly on behalf of any Loan Party) pending or, to knowledge of any Loan Party, threatened against any Loan Party at law or in equity by or before any Governmental Authority, domestic or foreign, or before any arbitrator of any kind (other than as referred to in subparagraph (d) of the definition of Permitted Encumbrances), and no Loan Party is in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any Governmental Authority, domestic or foreign or any arbitrator of any kind, except in each case to the extent such action, suit, proceeding or default would not reasonably be expected to have a Material Adverse Effect;

(p) **Financial Condition**: all Financial Statements submitted by the Borrower to the Agent fairly reflect, as of the dates thereof, the consolidated financial condition of the entities referred to therein and the results of operations for the periods covered thereby, the annual Financial Statements have been prepared in accordance with GAAP and, from the date of the latest annual or interim Financial Statements submitted to the Agent, there has been no material adverse change in the consolidated financial condition of the entities referred to therein or their respective Property or condition which has not been disclosed in writing to the Agent;

(q) **Hedge Agreements**: the Borrower is not a party to any Hedge Agreements other than Permitted Lender Hedges;

(r) **Taxes**: each Loan Party has filed all tax returns which were required to be filed, has paid or made provision for payment (in accordance with GAAP) of all Taxes which are due and payable, and has provided adequate reserves (in accordance with GAAP) for the payment of any Taxes, the payment of which is being contested, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;

(s) **Insurance**: each Loan Party has in full force and effect such policies of insurance in such amounts issued by insurers of recognized standing insuring its Property and operations, including business interruption insurance and replacement cost insurance, and providing such coverage as would be maintained by a prudent operator engaged in the same or similar business in the Relevant Jurisdictions where its Property and operations are located, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;

(t) **Compliance with Laws**: each Loan Party is in material compliance with all Applicable Law, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect;

(u) **Environmental Laws**: each Loan Party has obtained all material permits, licenses and other authorizations which are required under Environmental Law, except to the extent any failure to do so would not reasonably be expected to have a Material Adverse Effect;

(v) **Environmental Condition of Property**: no Property of any Loan Party:

(i) is the subject of any material outstanding orders from a government agency or otherwise alleging violation of any Environmental Law; and

(ii) does not comply, with respect to its use and condition and in all material respects, with Environmental Law and all terms and conditions of all permits, licenses and other authorizations which are required under Environmental Law,

except to the extent that any such violation or failure to comply would not reasonably be expected to have a Material Adverse Effect;

(w) **Principal Place of Business**: as of the date of this Agreement, the location of the principal place of business of each Loan Party, or, if such Loan Party has more than one principal place of business, its chief executive office, is set forth in Schedule "I" hereto;

(x) **Relevant Jurisdictions:** as of the date of this Agreement, the only Relevant Jurisdictions in which each Loan Party has material Property or in which it carries on a material portion of its business are set out in Schedule "I" hereto;

(y) **Operating Accounts**: as of the date of this Agreement, the only operating accounts of each Loan Party are set out in Schedule "I" hereto;

(z) **Owned Real Property**: as of the date of this Agreement, none of the Loan Parties owns any Real Property other than as disclosed in Schedule "J" hereto;

(aa) **Leased Real Property**: as of the date of this Agreement, none of the Loan Parties leases any Real Property other than as disclosed in Schedule "J" hereto;

(bb) **Events of Default**: no event or circumstance has occurred which constitutes, or which with the giving of notice, lapse of time or both would constitute, an Event of Default;

(cc) **Arrangement Agreement, Plan of Arrangement**: true and complete copies of the Information Circular and the Plan of Arrangement have been provided to the Agent, for and on behalf of the Lenders, and such documents have not been amended, modified, supplemented, restated or replaced, other than as provided to the Agent, for and on behalf of the Lenders; and

(dd) **Disclosure**: the Loan Parties have given to the Lenders or the Agent all material information in the possession of or available to them and relevant to the assessment of the credit facilities of the type herein contemplated and, in addition, all information necessary to make any statements contained herein not misleading in the light of the circumstances in which they were given, and there is no fact known to any Loan Party as of the date hereof that has not been disclosed by it to the Agent and the Lenders in writing that would reasonably be expected to have a Material Adverse Effect.

8.2 Survival of Representations and Warranties

Unless expressly stated to be made as of a specific date, the representations and warranties made in this Agreement shall survive the execution of this Agreement and all other Credit Documents, and the representations and warranties in Section 8.1 shall be deemed to be repeated as of the date of each Advance (but not including any deemed Advance) and as of the date of delivery of each Compliance Certificate, subject to modifications made by the Borrower to the Agent and the Lenders in writing and accepted by the Lenders. Each Lender shall be deemed to have relied upon such representations and warranties at each such time as a condition of making an Advance hereunder or continuing to extend the Facilities hereunder. Each Hedge Provider shall be deemed to have relied upon such representations and warranties in connection with the entering into by any Hedge Provider of any Hedging Agreement with the Borrower.

ARTICLE IX
COVENANTS

9.1 General Covenants

Each Loan Party covenants and agrees with the Agent and the Lenders that, during the term of this Agreement, unless the Agent acting on the instructions of the Required Lenders (each to be acting reasonably) otherwise provides its prior written consent, it shall:

(a) **<u>Maintain Existence</u>**: subject to Section 9.6, maintain and preserve its existence, organization and status in each jurisdiction of organization and in each other Relevant Jurisdiction, and make all partnership, corporate, trust and other filings and registrations necessary or advisable in connection therewith, except to the extent failure to make such filings would not have a Material Adverse Effect;

(b) **<u>Conduct Business</u>**: carry on and continuously conduct its Business in an efficient, diligent and businesslike manner;

(c) **<u>Comply With Laws</u>**: obtain, as and when required, and maintain in good standing all permits, approvals and Government Authorizations necessary to the ownership of its Property, to the conduct of its business in each Relevant Jurisdiction and to the performance of the Obligations, and operate its business in substantial compliance with and comply with all Applicable Law (including without limitation Environmental Law) which, if not obtained, maintained, operated in compliance with or complied with would reasonably be expected to have a Material Adverse Effect;

(d) **Pay Taxes**: duly file on a timely basis all Tax returns required to be filed by it, and duly and punctually pay all Taxes levied or assessed against it or its Property (except for those Taxes which are due but are being contested diligently in good faith by appropriate proceedings), except to the extent failure to do so would not have a Material Adverse Effect;

(e) **Provide Access**: upon reasonable notice, permit any representative of the Agent and the Lenders to discuss with its senior management its business, material properties, financial condition and prospects;

(f) **Pay Indebtedness**: duly and punctually pay all Obligations owing to the Agent and the Lenders hereunder on the dates, times and places and in the manner specified herein;

(g) **Use Advances**: use the proceeds of any Advance hereunder only for the purposes set out in Sections 2.2 and 2.6, as applicable;

(h) **Deliver Security**: execute and deliver to the Agent the Security required by Section 6.1, and upon any new Subsidiary becoming a Material Subsidiary or any new Person becoming a Partner, as and when required by Section 6.2;

(i) **Maintain Effectiveness of Security**: ensure that the Security granted to the Agent remains legal, valid, binding and enforceable, in accordance with its respective terms (subject to Applicable Law affecting the rights of creditors generally and rules of equity of general application);

(j) **Maintain Accounts**: maintain (i) all operating accounts located in the United States of America of each Loan Party with Wells Fargo, Texas Capital Bank or other financial institutions acceptable to the Agent, acting reasonably and (ii) all operating accounts located in Canada or elsewhere of each Loan Party with BMO;

(k) **Co-Operate**: co-operate with the Agent so as to permit the Agent to:

(i) forthwith register, file and record the Security (or notices, financing statements or other registrations, including amending registrations, in respect thereof) in accordance with the terms hereof in all proper offices where such registration, filing or recording may be necessary or advantageous to perfect or protect the Security Interests constituted by the Security; and

(ii) maintain all such registrations in full force and effect;

(l) **Maintain Intercorporate Relations**: for so long as there remains any Obligations of the Borrower, ensure that the Borrower remains wholly owned, directly or indirectly, by BD Limited;

(m) **Give Notice**: promptly give written notice to the Agent of:

(i) any Default or Event of Default of which it becomes aware, using reasonable diligence,

(ii) any material amendment to its method of financial reporting, together with full particulars thereof, the reasons therefore and effect thereof,

(iii) any damage to or destruction of any Property which might give rise to a claim for insurance monies in excess of $500,000,

(iv) any proposed movement of an asset (other than the movement of aircraft in the ordinary course of business) to a jurisdiction other than a Relevant Jurisdiction;

(v) the entering into by any Loan Party of any agreement, letter of intent, memorandum of understanding or contract (binding or non-binding) regarding any proposed Acquisition (other than in respect of any Minor Acquisition) by any Loan Party by providing the Agent with a copy of such agreement, letter of intent, memorandum of understanding or contract, as the case may be, along with notice to the Agent as to whether or not the proposed Acquisition is to be a Funded Acquisition;

(vi) on becoming aware of any Environmental Liability occurring on or in relation to its Property, or the receipt of any order from a Governmental Authority or otherwise alleging violation of any Environmental Law, which would reasonably be expected to have a Material Adverse Effect, including the existence of any Hazardous Materials located on, above or below the surface of any land which it controls or contained in the soil or water constituting such land, and any Release of Hazardous Materials that has occurred on or from such land (except those Hazardous Materials being stored, used or otherwise handled in the ordinary course of business in substantial compliance with Applicable Law);

(vii) any litigation, arbitration or other proceeding commenced or threatened against or affecting it which if adversely determined would reasonably be expected to have a Material Adverse Effect;

(viii) any Security Interest of which it becomes aware that has become registered, filed or recorded against the interest of any Loan Party which is not a Permitted Encumbrance;

(ix) any proposed termination, cancellation or non-renewal of the general partner of the Borrower; and

(x) any other change (financial or otherwise) in the business, affairs, operations, assets, liabilities (contingent or otherwise) or capital of any Loan Party that has or would reasonably be expected to have a Material Adverse Effect;

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

(n) **<u>Maintain Common Fiscal Year End</u>**: maintain a common Fiscal Year end among all the Loan Parties;

(o) **<u>Hedge Agreements</u>**: use reasonable commercial efforts to provide each Lender (or its Affiliate) with its Proportionate Share (based on the percentage of such Lender's Commitment to the Total Commitment) of the trades or transactions entered into under Hedge Agreements with all Lenders (or their Affiliates);

(p) **Deliver Assignment of Material Leases**: upon request by the Agent acting reasonably, execute and deliver to the Agent, for and on behalf of the Lenders and the Hedge Providers, an assignment of Material Leases (which assignment shall be subject to obtaining third party consents to such assignment, which consents such Loan Party shall use commercially reasonable efforts to obtain);

(q) **Provide Financial Information**: use reasonable efforts to provide the Agent from time to time with such other financial information and data as are reasonably requested by the Agent or the Lenders; and

(r) **Provide Documents**: use reasonable efforts to provide the Agent from time to time with such other documents, security, opinions, consents, acknowledgments and agreements as are requested by the Agent or the Lenders and are reasonably necessary to implement this Agreement and the Security.

9.2 Financial Covenants

(a) The Borrower and BD Limited covenant and agree with the Agent and the Lenders that, during the term of this Agreement, the following Financial Covenants shall be observed and maintained at all times, to be tested as of the last day of each Fiscal Quarter based on the consolidated Financial Statements of BD Limited:

(i) ensure that the Current Ratio shall be not less than [redacted]

(ii) ensure that the Total Funded Debt to EBITDA Ratio shall be not greater than [redacted] tested on a trailing four quarter basis;

(iii) ensure that the Fixed Charge Coverage Ratio shall be not less tha[redacted], tested on a trailing four quarter basis;

(iv) ensure that the Tangible Net Worth of BD Limited shall not be less than the Tangible Net Worth Threshold; and

(v) ensure that the aggregate Capital Expenditures of the Loan Parties in any Fiscal Year comply with the restrictions in Section 0.

9.3 Covenant Regarding Borrower and BD Limited Financial Results

The Borrower covenants and agrees with the Agent and the Lenders that, during the term of this Agreement, in any Fiscal Year or in any Fiscal Quarter, there shall be no difference greater than [redacted]tween the consolidated financial results of BD Limited and the unconsolidated financial results of the Borrower.

9.4 Reporting Requirements

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

(a) cause to be prepared and delivered to the Agent as soon as practicable, and in any event within 90 days after the end of each Fiscal Year, the annual audited consolidated Financial Statements of BD Limited including comparisons to plan and management discussion and analysis, such Financial Statements to be audited by a nationally or internationally recognized accounting firm and to be prepared in accordance with GAAP on a consolidated basis;

(b) cause to be prepared and delivered to the Agent as soon as practicable, and in any event within 90 days after the end of each of its Fiscal Years, the annual unaudited Unconsolidated Financial Statements of each Loan Party, such Financial Statements to be prepared in accordance with GAAP;

(c) cause to be prepared and delivered to the Agent as soon as practicable, and in any event within 45 days of the end of each Fiscal Quarter (including the fourth quarter), the interim unaudited consolidated Financial Statements of BD Limited at the end of each such Fiscal Quarter certified by a Responsible Officer of the General Partner as to accuracy, including Fiscal Year-to-date comparison to plan, comparison of quarterly results to results from the same Fiscal Quarter in the previous Fiscal Year, comparison of Fiscal Year-to-date results to Fiscal Year-to-date results at the end of the same Fiscal Quarter in the previous Fiscal Year and management discussion and analysis, such Financial Statements to be prepared in accordance with GAAP on a consolidated basis;

(d) concurrently with the delivery of the Financial Statements referred to in paragraph (c) above, provide the Agent with a Compliance Certificate accompanied by calculations showing compliance with all Financial Covenants;

(e) concurrently with the delivery of the Financial Statements referred to in paragraph (c) above, provide the Agent with a Capex Borrowing Base Certificate listing (i) quarterly changes to the Consolidated Net Tangible Capital Assets, indicating over which of such assets the Agent has a first priority Security Interest (ii) the Capital Assets (other than intangible assets, including without limitation, goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs, deferred charges and other similar intangible assets) of the Loan Parties (iii) net Book Value Consolidated Net Tangible Capital Assets over which the Agent has a first priority Security Interest, and (iv) the Borrower's calculation of the Capex Facility Limit at the end of such Fiscal Quarter;

(f) concurrently with the delivery of the Financial Statements referred to in paragraph (c) above, cause to be prepared and delivered to the Agent:

(i) a listing of leases or other agreements with respect to Capital Assets (other than intangible assets, including without limitation, goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs, deferred charges and other similar intangible assets) entered into or assumed by each Loan Party from time to time, including without limitation the Material Leases, indicating, with respect to each such lease or agreement, (X) its term, (Y) the current monthly revenue, and (Z) the projected annual revenue on an annual basis through to the maturity date; and

(ii) a copy of each new Material Lease and each amendment to an existing Material Lease entered into by any Loan Party since the last delivery to the Agent of the Financial Statements referred to in paragraph (c) above;

(g) within 30 days after the end of each calendar month, provide the Agent with a Receivables Certificate listing (i) all Eligible Accounts Receivable, (ii) all Eligible U.S. Accounts Receivable, (iii) the calculation of the Operating Facility Limit as at the end of such calendar month, and (iv) copy of the monthly statements regarding the U.S. Bank Accounts;

(h) before the end of each Fiscal Year, provide the Agent with pro forma financial statements of BD Limited for the next succeeding Fiscal Year, in substantially the same form as the

Financial Statements referred to in (a), together with an annual business plan, operating budget and Capital Expenditure budget for the next proceeding Fiscal Year;

(i) concurrently with the delivery of an executed Request for an Offer of Extension, cause to be prepared and delivered annual operating budgets for the next two proceeding Fiscal Years, including Capital Expenditure budgets, and containing such information and detail as the Agent and Requested Lenders may reasonably request, with respect to BD Limited on a consolidated basis;

(j) as soon as practicable and in any event within sixty (60) days after the end of each Fiscal Quarter, cause to be prepared and delivered to the Agent BD Limited 's quarterly report to the Shareholders;

(k) promptly provide the Agent with copies of any filings made by any Loan Party with securities regulatory bodies;

(l) deliver to the Agent historical financial statements and pro forma financial statements (including balance sheet, income statements and cash flow statements), each containing such information and detail as the Agent may reasonably request, for any Acquisition referred to in Section 9.8;

(m) within ninety (90) days subsequent to the end of each Fiscal Year if there has been a change to the organizational structure of the Loan Parties and Subsidiaries, or within thirty (30) days after the completion of a Acquisition, as applicable, provide the Agent with an updated organizational chart for all Loan Parties and Subsidiaries; and

(n) promptly provide the Agent with such other information from time to time as the Agent may reasonably request respecting any Loan Party, including, without limitation, all information regarding (i) the Dene LP, and (ii) the U.S. Bank Accounts.

In each case, the Borrower shall provide its reporting materials under paragraphs (a) to (n) above to the Agent by electronic means, or where electronic means are not possible or practicable, the Borrower shall deliver to the Agent sufficient copies for each Lender.

9.5 Property

Each Loan Party covenants and agrees with the Agent and the Lenders that, during the term of this Agreement, unless the Agent acting on the instructions of the Required Lenders (each to be acting reasonably) otherwise provides its prior written consent, it shall:

(a) defend its Property against any Person claiming or attempting to claim the same, or asserting any interest adverse to its interests therein, and keep accurate and complete records of its Property;

(b) subject to normal safety precautions of the operators of same, upon reasonable notice, permit any representatives of the Agent to visit and inspect its Property during ordinary business hours, and furnish the Agent with any information thereon reasonably requested by the Agent from time to time as may be available to it;

(c) maintain, protect and preserve its Property which it operates in accordance with good business practice and take reasonable steps to cause the operator(s) of its Property which it does not operate to do likewise, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect;

(d) comply in all material respects with Applicable Law, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect;

(e) where the Agent reasonably believes that any Loan Party is in material breach of any Environmental Law and that the result of such breach would have a Material Adverse Effect, permit, or if it is not the operator seek the permission of the operator to permit, properly qualified representatives of the Borrower, such Loan Party or the Agent (at the option of the Agent, acting reasonably), to conduct tests, inspections and appraisals of or on the subject Property, including environmental audits and soil tests, and to remove soil and other samples from the subject Property from time to time to determine whether there is a breach of Environmental Law which would have a Material Adverse Effect, provided that the results of any such tests shall also be delivered to the Borrower, and the Borrower shall be responsible for the costs thereof;

(f) pay or cause to be paid all material rents, royalties and other obligations to pay money validly imposed upon it, or upon its Property or any part thereof, as and when the same become due and payable or provide adequate reserves (in accordance with GAAP) for payment of any such obligations, the payment of which is being contested in good faith by appropriate proceedings, except in each case to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect; and

(g) maintain insurance on its Property with financially sound and reputable insurance companies or associations including all-risk property insurance, comprehensive general liability insurance and business interruption insurance, in amounts and against risks that are determined to be appropriate by such Loan Party acting prudently, except to the extent that any failure to do so would not reasonably be expected to have a Material Adverse Effect, and which insurance shall have been reviewed and approved by the Lenders, each acting reasonably, and furnish to the Agent, upon written request but in any event annually, satisfactory evidence of the insurance carried.

9.6 Negative Corporate Covenants

So long as any Obligations remain outstanding or any Commitment remains in effect, without the prior written consent of all of the Lenders (each to be acting reasonably), no Loan Party shall:

(a) (i) merge, amalgamate or consolidate with any Person or Persons other than a Loan Party, or

(ii) enter into any corporate reorganization or other transaction intended to effect a consolidation, amalgamation or merger other than between the Loan Parties, or

(iii) become party to any transaction whereby directly or indirectly all or any substantial part of its Property would become the property of any other Person other than a Loan Party, whether by way of reorganization, dissolution, winding-up, liquidation, amalgamation, arrangement, transfer, lease or otherwise,

if, in any such case, there would be an adverse impact on the perfection or priority of the Security;

(b) initiate or participate in the Hostile Acquisition of any Person or any attempt to complete a Hostile Acquisition of any Person;

(c) engage in any activities or business or enter into ventures other than the Business and in the case of the Borrower or BDGI, the Dene LP and the business activities associated therewith;

(d) except as otherwise permitted by Section 9.6(a), amend or alter the Partnership Agreement in any way that could reasonably be expected to have a Material Adverse Effect;

(e) in the case of any Loan Party, cease to carry on the Business or operate the Business in a manner that could reasonably be expected to have a Material Adverse Effect;

(f) do or permit anything to adversely affect the ranking or validity or the Security except by incurring a Permitted Encumbrance;

(g) change its name, without providing the Agent with at least 20 days' prior written notice thereof and promptly taking other steps, if any, as the Agent may, in its discretion, reasonably request to permit the Agent to maintain the perfection of the Security with respect to the change in name, including without limitation, providing the Agent within 10 days of any change in name with certified copies of the certificate and supporting documents effecting such name change;

(h) permit its chief executive office to be located in any province except the province of Alberta, without providing the Agent with at least 20 days' prior written notice thereof and promptly taking other steps, if any, as the Agent may, in its discretion, reasonably request to permit the Agent to perfect the Security with respect to the change in location;

(i) create, incur, assume or permit to exist any Security Interest upon any of the Property of any Loan Party, except Permitted Encumbrances;

(j) create, acquire or suffer to exist any Subsidiary that is not a Material Subsidiary if it would result in a violation of Section 6.2 hereof;

(k) allow any new Person to become a Partner if it would result in a violation of Section 6.2 hereof;

(l) issue any Securities, other than Common Shares, to any Person other than a Loan Party;

(m) redeem any Securities other than by a Loan Party of another Loan Party; or

(n) if such entity is a partnership or limited liability company, amend its constating documents or documents which create interests in such entity so as to designate such interests as a "security" for the purposes of the *Securities Transfer Act* (Alberta) or equivalent statute.

9.7 Restrictions on Additional Debt, Guarantees, Security and Hedge Agreements; Balances in U.S. Dollar Accounts

So long as any Obligations remain outstanding or any Commitment remains in effect, without the prior written consent of the Agent upon the instructions of the Required Lenders (each to be acting reasonably), no Loan Party shall:

(a) create, incur, assume or permit to exist any Debt, other than Permitted Indebtedness;

(b) provide any Guarantee, loans or other financial assistance to any Person other than:

(i) to the Agent, the Lenders and the Hedge Providers;

(ii) for the benefit of a Loan Party;

(iii) loans, from the Borrower to the Dene LP, provided that the aggregate principal amount of such loans, at any time, shall not exceed Cdn. [redacted]; and

(iv) Guarantees or analogous financial assistance provided by the Borrower for the benefit of the Dene LP, provided that the recourse to the Borrower under any such financial assistance shall be limited to the Securities of the Dene LP owned by the Borrower;

(c) create, assume, suffer to exist or otherwise have outstanding any Security Interest on any Property except for Permitted Encumbrances;

(d) pay any non-cash or payment-in-kind interest to any Person other than to a Loan Party;

(e) enter into or otherwise become a party to or be obligated under any Hedge Agreement, unless:

(i) such Hedge Agreement is a Permitted Lender Hedge;

(ii) if such Hedge Agreement is:

(A) a Currency Exchange Hedge Agreement, such Currency Exchange Hedge Agreement is a Permitted Currency Exchange Hedge Agreement; and

(B) an Interest Rate Hedge Agreement, such Interest Rate Hedge Agreement is a Permitted Interest Rate Hedge Agreement;

(iii) the Borrower has executed and delivered the documentation required under Section 6.11; and

(iv) such Hedge Agreement is otherwise permitted hereunder; or

(f) maintain, in aggregate, in the U.S. Dollar Accounts, or any of them, a balance in excess of [redacted].S.$, for any period in excess of two (2) Business Days.

9.8 Restrictions on Acquisitions

(a) Except as otherwise permitted under this Section 9.8, the Borrower and the other Loan Parties shall not incur any expenditures for any Acquisition unless (i) such Acquisition does not breach the provisions of any of Section 9.6(b), 9.6(c), or Section 9.8(b) hereof; and (ii) no Default or Event of Default exists or would result from the completion of such Acquisition. Notwithstanding the previous provisions of this Section 9.8(a):

(i) the Borrower may acquire Securities issued by the Dene LP; provided that, the Borrower shall not make an equity contribution to the Dene LP in excess of Cdn. [redacted] and

(ii) Boxx may complete the Nortex Acquisition, subject to compliance with Section 7.2 hereof.

(b) Without the prior written consent of the Agent, acting upon the instructions of the Lenders (each to be acting reasonably), the Borrower and the other Loan Parties shall not complete any

Acquisition (including any Funded Acquisition) unless, after completion of such Acquisition, or Funded Acquisition, as the case may be:

(i) such Acquisition does not breach the provisions of Sections 9.6(b) or Section 9.6(c);

(ii) the aggregate value of the consideration paid in respect of Minor Acquisitions in each Fiscal Year (calculated and determined immediately prior to the completion of each Minor Acquisition) does not exceed [redacted]

(iii) other than in a respect of a Minor Acquisition, total Environmental Liabilities and outstanding litigation related to such Acquisition does not, or is not reasonably expected to exceed [redacted] and

(iv) the completion of such Acquisition will not result in a Default or an Event of Default,

and provided further that, in respect of each such Acquisition (excluding any Minor Acquisition), the Borrower shall concurrently provide the Agent with:

(v) a calculation of EBITDA by quarter for the last four Fiscal Quarters, as applicable;

(vi) a pro forma calculation of all Financial Covenants as at the end of the last Fiscal Quarter, incorporating the financial results as if consolidated for the last four Fiscal Quarters and the effect of any Acquisition financing in the calculation thereof;

(vii) a revised financial forecast for the current Fiscal Year incorporating the New Subsidiary, with pro forma financial statements incorporating the New Subsidiary, in substantially the same form as the Financial Statements referred to in Section 9.4(c);

(viii) to the extent available, historical financial statements for the New Subsidiary, in substantially the same form as the Financial Statements referred to in Section 9.4(c) for the three (3) years prior to the date of the Acquisition; and

(ix) evidence of completion of environmental due diligence and information regarding Environmental Liabilities and outstanding litigation, to be satisfactory to the Lenders, acting reasonably, and the Borrower acknowledges that the Lenders reserve the right to request that the Borrower provide third party reports to confirm the amount of any Environmental Liabilities.

9.9 Restrictions on Distributions

Without the prior written consent of the Agent upon the instructions of the Required Lenders (each to be acting reasonably), the Loan Parties shall not declare, pay or make any Distribution, if:

(a) a demand is or has been made by the Agent or any of the Lenders for repayment of all or any portion of the Obligations;

(b) a Default or Event of Default has occurred and is continuing or would reasonably be expected to occur as a result thereof; or

(c) the aggregate of all Distributions and other payments made by BD Limited to its Shareholders, on a trailing four quarter basis, exceeds Excess Cash Flow.

In any case, no Loan Party shall change the terms on which it makes Distributions according to its Partnership Agreement (in the case of the Borrower) or any other constating document or agreement (in the case of all Loan Parties) without the prior written consent of the Agent upon the instructions of the Required Lenders (each to be acting reasonably), nor shall any Distributions made by BD Limited be funded by any of the Facilities without the prior written consent of the Agent upon the instructions of the Required Lenders.

9.10 Restrictions on Property Dispositions

Without the prior written consent of the Agent upon the instructions of the Required Lenders (each to be acting reasonably), no Loan Party effect a proposed sale, transfer or other disposition of any Property, other than Permitted Dispositions, and other than by way of security, unless the Borrower has provided a reinvestment plan to the Agent and the Lenders, or the net proceeds of disposition thereof are used in accordance with Section 3.6. The particulars of all dispositions, including the nature of the Property disposed of, the value attributed thereto, and the particulars of all reinvestments by the Borrower for the past Fiscal Quarter, shall be certified by the Borrower in each Compliance Certificate.

9.11 Maximum Annual Capital Expenditures

Without the prior written consent of the Agent acting upon the instructions of the Required Lenders, each to be acting reasonably, the Borrower shall ensure that the aggregate Capital Expenditures of the Loan Parties in any one Fiscal Year shall not exceed:

(a) [redacted] in respect of the Fiscal Year ended December 31, 2009, or

(b) a specified dollar amount to be established by the Required Lenders based on their annual review and based on the material provided by the Borrower with respect to such Capital Expenditures, for each succeeding Fiscal Year.

ARTICLE X
DEFAULT

10.1 Events of Default

The occurrence of any one or more of the following events, after the expiry of any applicable cure period set out below, shall constitute an **"Event of Default"** under this Agreement:

(a) if the Borrower fails to pay any amount of Outstanding Principal when the same becomes due and payable hereunder, whether at maturity or otherwise, or fails to pay any amount of interest, fees, or other Obligations within three (3) Business Days after the same becomes due and payable hereunder; or

(b) if the any Loan Party fails to observe or perform any covenant or obligation contained herein or in any other Credit Document in any material respect (not otherwise specifically dealt with in this Section 10.1) and such breach or omission shall continue unremedied for more than fifteen (15) Business Days after the earlier of a Responsible Officer of the Borrower first having knowledge of such breach or omission, or any Loan Party receiving notice from the Agent of such breach or omission; or

(c) if any Loan Party makes any representation, warranty or statement under any of the Credit Documents which is incorrect in any material respect when made or deemed to have been made and (i) the incorrect representation, warranty or statement is not capable of being remedied by such Loan Party, or (ii) if the matter is capable of being remedied by such Loan

Party the same shall continue unremedied for more than fifteen (15) Business Days after the earlier of a Responsible Officer of the Borrower first having knowledge of such incorrect or misleading representation, warranty or statement, or any Loan Party receiving written notice from the Agent of such incorrect or misleading representation, warranty or statement; or

(d) if any event or circumstance (including non-payment) shall occur under any agreement or instrument relating to Indebtedness of any Loan Party which would permit a Person to declare (whether immediately or with lapse of time or both) an amount in excess of [redacted] to become due prior to the stipulated date for repayment thereof, or maturity (or in the case of Debt payable on demand or under a Guarantee, if any such demand is made), and such circumstance shall continue unremedied for more than fifteen (15) Business Days (provided that such grace period shall cease to apply if a demand has been made and any applicable grace period has expired or if the default is not being contested in good faith by such Loan Party in appropriate proceedings); or

(e) if any Loan Party shall:

(i) become insolvent, or generally not pay its debts or meet its liabilities as the same become due, or suspend or threaten to suspend the conduct of its business, or admit in writing its inability to pay its debts generally, or declare any general moratorium on payment of its Indebtedness or interest thereon, or propose a compromise or arrangement between it and any of its creditors;

(ii) make an assignment for the general benefit of its creditors, whether or not under the *Bankruptcy and Insolvency Act* (Canada), or make a proposal (or file a notice of its intention to do so), whether or not under such Act;

(iii) institute any proceedings seeking to adjudicate it an insolvent, or seeking compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any other statute, rule or regulation (including the Insolvency Legislation) relating to bankruptcy, winding-up, insolvency, administration, plans of arrangement, relief or protection of debtors;

(iv) apply for the appointment of, or the taking of possession by, a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or for all or substantially all of its Property; or

(v) take any overt action to approve, consent to or authorize any of the actions described in this paragraph (e) or in paragraph (f) below; or

(f) if any petition shall be filed, application be made or other proceeding be instituted by a third party against or in respect of any Loan Party:

(i) seeking to adjudicate it an insolvent, or a declaration that an act of bankruptcy has occurred;

(ii) seeking a receiving order against it, including under the *Bankruptcy and Insolvency Act* (Canada);

(iii) seeking liquidation, dissolution, winding-up, reorganization, administration, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts under any statute, rule or regulation (including the Insolvency Legislation) relating to bankruptcy, winding-up, insolvency, administration, plans of arrangement, relief or protection of debtors; or

(iv) seeking the entry of an order for relief or the appointment of a receiver, interim receiver, administrative receiver, receiver/manager, custodian, administrator, trustee, liquidator or other similar official for it or any material part of its Property,

and such petition, application or proceeding shall continue undismissed, or unstayed and in effect, for a period of fifteen (15) Business Days after the institution thereof, provided that if an order, decree or judgment which is not stayed has been granted (whether or not entered or subject to appeal) against the Loan Party thereunder in the interim, such grace period shall cease to apply; or

(g) if any Property of any Loan Party having a fair market value in excess of [redacted] shall be seized (including by way of execution, attachment, garnishment or distraint) or any Security Interest thereon shall be enforced, or such Property shall become subject to any receivership, or any charging order or equitable execution of a court, or any writ of enforcement, writ of execution or distress warrant with respect to obligations in excess of [redacted] shall exist in respect of any Loan Party or such Property, or any receiver, sheriff, civil enforcement agent or other Person shall become lawfully entitled to seize or distrain upon any such Property under the *Civil Enforcement Act* (Alberta), the *Workers' Compensation Act* (Alberta), the *Personal Property Security Act* (Alberta) or any other Applicable Law whereunder similar remedies are provided, and in any case such seizure, execution, attachment, garnishment, distraint, receivership, charging order or equitable execution, or other seizure or right, shall continue in effect and not released or discharged for more than fifteen (15) Business Days; or

(h) if one or more judgments for the payment of money in the aggregate in excess of [redacted] from time to time, and not substantially covered by insurance, shall be rendered by a court of competent jurisdiction against any Loan Party and such party shall not have (i) provided for its discharge in accordance with its terms within fifteen (15) Business Days from the date of entry thereof, or (ii) procured a stay of execution thereof within fifteen (15) Business Days from the date of entry thereof and within such period, or such longer period during which execution of such judgment shall have been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal; or

(i) if any Loan Party denies, to any material extent, its obligations under the Credit Documents or claims any of the Credit Documents to be invalid or withdrawn in whole or in part; or any of the Credit Documents or any material provision becomes unlawful or is changed by virtue of legislation or by a court, statutory board or commission; or

(j) if any Loan Party is in material breach of any Applicable Law, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect;

(k) if any Loan Party is in material breach of any Material Lease, except to the extent that any failure to comply would not reasonably be expected to have a Material Adverse Effect; or

(l) there is, in the opinion of the Agent and the Lenders, acting reasonably, any other event which has not been approved by the Lenders in writing and which could reasonably be expected to have a Material Adverse Effect; or

(m) if there occurs a Change of Control in respect of the Borrower, the General Partner or BD Limited and the Lenders have not consented to such Change of Control. In this Section 10.1, "**Change of Control**" means the occurrence of any of the following events:

(i) a Person or group of Persons, acting jointly or in concert, acquires, directly or indirectly (other than by way of security for a *bona fide* debt), Securities of the General Partner to which are attached more than 30% of the votes that may be cast to elect the directors of the General Partner, or Common Shares in an amount equal to [redacted] of all issued and outstanding Common Shares;

(ii) a Person or group of Persons, acting jointly or in concert, acquires, directly or indirectly (other than by way of security for a *bona fide* debt), a sufficient number of Common Shares that the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of BD Limited; or

(iii) the Borrower or BD Limited amalgamates or otherwise merges its business and properties with or into any other Person if that amalgamation or merger is not otherwise permitted by the other provisions of this Agreement.

10.2 Acceleration, Demand and Termination of Rights

Upon the occurrence of an Insolvency Default, the Obligations shall become immediately due and payable without the necessity of any demand upon or notice to the Borrower by the Agent. Upon the occurrence and during the continuance of any Event of Default, other than an Insolvency Default, which has not been remedied or waived, the Agent may by written notice to the Borrower declare the Obligations to be immediately due and payable, whereupon they shall become and be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. The Lenders shall not be obliged to make any further Advances (including honouring any cheques which are presented for payment) from and after the earliest to occur of the following: (i) delivery by the Agent to the Borrower of an Acceleration Notice, or (ii) the occurrence of an Insolvency Default.

10.3 Payment of Bankers' Acceptances and Letters of Credit

Immediately upon the occurrence of an Insolvency Default or the making of a declaration by the Agent under Section 10.2, the Borrower shall, without necessity of further act or evidence, be and become thereby unconditionally obligated to provide forthwith to the Agent or the Swingline Lender, as the case may be, for the Applicable Lenders' benefit, cash collateral equal to the full principal amount at maturity of all Bankers' Acceptances, Notional Bankers' Acceptances and Letters of Credit then outstanding and issued by each Lender, and the Borrower hereby unconditionally promises and agrees to deposit with the Agent or the Operating Lender, as the case may be, immediately upon such demand cash collateral in the amount so demanded. The Borrower authorizes the Agent or the Swingline Lender, as the case may be, to debit its account with the amount required to pay such Bankers' Acceptances, and the amount required to pay any drawings under Letters of Credit, notwithstanding that such Bankers' Acceptances and Notional Bankers' Acceptances may be held by a Lender in its own right at maturity. Amounts paid to the Agent pursuant to such a demand in respect of Bankers' Acceptances or Notional Bankers' Acceptances shall be applied against, and in respect of a demand by the Agent shall reduce, *pro rata* among the BA Lenders and the Non BA Lenders, the obligation of the Borrower to pay amounts then or thereafter payable under such Bankers' Acceptances or Notional Bankers' Acceptances accepted or issued under the Operating Facility or the Capex Facility at the times amounts become payable under or in respect thereof, as the case may be. Amounts paid to the Swingline Lender pursuant to such a demand in respect of Letters of Credit shall be applied against, and shall reduce, the obligation of the Borrower to pay amounts then or thereafter payable under such Letters of Credit accepted or issued under the Swingline Facility at the times amounts become payable under or in respect thereof, as the case may be.

10.4 Remedies

Upon the occurrence of an Insolvency Default or the making of a declaration contemplated by Section 10.2, the Security shall become immediately enforceable and the Lenders may direct the Agent to take such action or proceedings as the Lenders in their sole discretion deem expedient to enforce the same (such direction is herein referred to as an "**Enforcement Notice**"), all without any additional notice, presentment, demand, protest or other formality, all of which are hereby expressly waived by the Borrower.

10.5 Waivers

Subject to Section 11.1, the Required Lenders may from time to time waive an Event of Default, absolutely or for a limited time and subject to such terms and conditions as such Required Lenders may specify. No such waiver shall be construed to extend to the occurrence of any other Event of Default. Any such waiver may be given prospectively or retrospectively. No failure of the Agent or the Lenders to exercise, or delay by the Agent or the Lenders in exercising, any of its rights or remedies shall be construed as a waiver of any Event of Default.

10.6 Saving

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

10.7 Perform Obligations

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

10.8 Third Parties

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

10.9 Remedies Cumulative

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

10.10 Notices of Events of Default

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

10.11 Permitted Lender Hedges

Upon the delivery by the Agent to the Borrower of an Acceleration Notice, or the occurrence of an Insolvency Default, the Borrower shall not enter into or become bound by a Permitted Lender Hedge without first obtaining the written consent of all of the Lenders.

ARTICLE XI
THE AGENT AND THE LENDERS

11.1 Decision-Making

(a) Any amendment to this Agreement and the granting of any waiver or consent by the Lenders relating to the following matters shall require the unanimous agreement of the Lenders:

(i) decreases in interest rates and fees in respect of the Facilities;

(ii) changes in the amount of credit available under the Facilities, changes in the amount of any Lender's Commitment, the Swingline Facility Commitment, the Operating Facility Commitment or the Capex Facility Commitment, and changes in the Outstanding Principal under the Facilities (other than as expressly contemplated in this Agreement);

(iii) extensions of the Operating Facility Maturity Date, the Capex Facility Maturity Date or the Capex Facility Term-Out Date, other than as expressly contemplated in this Agreement;

(iv) extensions of the scheduled dates for any payments of principal, interest and other amounts hereunder or the scheduled amounts of repayments hereunder;

(v) material amendments to the Security, and releases of all or any portion of the Security except to the extent provided in paragraph (c) below;

(vi) the definitions of "Required Lenders" and "Proportionate Share" in Section 1.1; and

(vii) this section 11.1, and any other provision of this Agreement which requires the unanimous consent of the Lenders in connection with any action to be taken or consent to be provided by the Lenders.

(b) Except for the matters described in paragraph (a) above, any amendment to this Agreement shall be effective if made among the Borrower, the Agent and the Required Lenders, and for greater certainty any such amendment which is agreed to by the Required Lenders shall be final and binding upon all Lenders, and, if applicable, the Hedge Providers.

(c) The Agent may from time to time without notice to or the consent of the Lenders execute and deliver releases of the Security or any portion thereof in respect of any item of Collateral (whether or not the proceeds of sale thereof are received by the Agent) which the Loan Parties are permitted to dispose of without obtaining the prior written consent of the Required Lenders; and in providing any such releases the Agent may rely upon and assume the correctness of all information contained in any certificate or document provided by the Borrower, without further enquiry. Otherwise, any release or discharge in respect of the Security or any portion thereof shall require the written consent of the Lenders acting unanimously.

(d) Except for the matters which require the unanimous consent of the Lenders as set out above, any action to be taken or decision to be made by the Lenders pursuant to this Agreement (specifically including for greater certainty the issuance of written notice to the Borrower of the occurrence of a Default or Event of Default, the issuance of a demand for payment of the Obligations, a decision to make an Advance despite any condition precedent relating thereto not being satisfied, the provision of any waiver in respect of a breach of any covenant or the issuance of any consent which may be required under Article IX) shall be effective if approved by the Required Lenders; and any such decision or action shall be final and binding upon all the Lenders, and, if applicable, the Hedge Providers.

(e) Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be unanimous shall be made at a meeting of the Lenders called by the Agent pursuant to Section 11.6(l) or by a written instrument executed by all of the Lenders. Any action to be taken or decision to be made by the Lenders pursuant to this Agreement which is required to be made by the Required Lenders shall be made at a meeting of the Lenders called by the Agent pursuant to Section 11.6(l) or by a written instrument executed by the Required Lenders. Any such instrument may be executed by fax and in counterparts.

11.2 Security

(a) Except to the extent provided in paragraph (b) the Security shall be granted in favour of and held by the Agent for and on behalf of the Lenders and the Hedge Providers in accordance with the provisions of this Agreement. The Agent shall, in accordance with its usual practices in effect from time to time, take all steps required to perfect and maintain the Security, including: taking possession of the certificates representing the securities required to be pledged hereunder; filing renewals and change notices in respect of such Security; and ensuring that the name of the Agent is noted as loss payee or mortgagee on all property insurance policies covering the Collateral. If the Agent becomes aware of any matter concerning the Security which it considers to be material, it shall promptly inform the Lenders. The Agent shall comply with all instructions provided by the Lenders in connection with the enforcement or release of the Security which it holds. The Agent agrees to permit each Lender to review and make photocopies of the original documents comprising the Security from time to time upon reasonable notice.

(b) If any Loan Party has provided security in favour of any Lender or Hedge Provider directly such as but not limited to security under the *Bank Act* (Canada), except for Permitted PMSIs, such Lender agrees to pay to the Agent all amounts received by it in connection with the enforcement of such security, and all such amounts shall be deemed to constitute Proceeds of Realization and shall be dealt with as provided in Section 11.3, provided however, if a Hedge Provider enforces any security granted to it by the Borrower, the Proceeds of Realization received by such Hedge Provider for the purposes of this Section 11.2(b) shall be deemed to be the amount, if any, by which the amount actually received by such Hedge Provider as a result of the enforcement of such security exceeds the amount of all Permitted Lender Hedge Obligations owed by the Borrower to such Hedge Provider. For the purposes of this Section 11.2(b), the amount received by a Lender (or an Affiliate of such Lender) shall: (i) not include amounts owing by the Borrower under Permitted Lender Hedges that have been set off or netted against amounts owing to the Borrower by such Lender (or an Affiliate of such Lender) under other Permitted Lender Hedges, but (ii) include the net amount owing by a Lender (or an Affiliate of such Lender) to the Borrower after termination of all Permitted Lender Hedges entered into by such Lender (or its Affiliates) and the Borrower after giving effect to set-off and netting contemplated in Section 11.2(b)(i) above. Each Lender which holds any such security agrees that it shall not enforce such security unless and until the Required Lenders have made a determination to enforce the Security pursuant to Section 11.1(d).

11.3 Application of Proceeds of Realization

Notwithstanding any other provision of this Agreement, the Proceeds of Realization of the Security or any portion thereof shall be distributed in the following order:

(a) firstly, in payment of all costs and expenses incurred by the Agent and the Lenders in connection with such realization, including legal, accounting and receivers' fees and disbursements;

(b) secondly, against the Obligations under this Agreement and the other Credit Documents (each Lender and the Affiliates of such Lender that are Hedge Providers being entitled to receive a share thereof equal to the portion of such Obligations then owing to such Lender and its Affiliates divided by the aggregate amount of all such Obligations);

(c) thirdly, against any other Obligations; and

(d) fourthly, if all Obligations listed above have been paid and satisfied in full, any surplus Proceeds of Realization shall be paid in accordance with Applicable Law.

11.4 Payments by Agent

(a) The following provisions shall apply to all payments made by the Agent to the Lenders hereunder:

(i) the Agent shall be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Agent from the Borrower;

(ii) if the Agent receives a payment of principal, interest, fees or other amount owing by the Borrower under any Facility or Tranche which is less than the full amount of any such payment due, the Agent shall distribute such amount received among the Lenders in each Lender's Proportionate Share of such Facility or Tranche;

(iii) if any Lender has advanced more or less than its Proportionate Share of any Facility or Tranche, such Lender's entitlement to a payment of principal, interest, fees or other amount owing by the Borrower under such Facility or Tranche shall be increased or reduced, as the case may be, to reflect the amount actually advanced by such Lender;

(iv) if a Lender's Proportionate Share of an Advance under any Facility or Tranche has been advanced for less than the full period to which any payment by the Borrower relates, such Lender's entitlement to receive a portion of any payment of interest or fees under such Facility or Tranche shall be reduced in proportion to the length of time such Lender's Proportionate Share has actually been outstanding (unless such Lender has paid all interest required to have been paid by it to the Agent pursuant to the CBA Model Provisions);

(v) the Agent acting reasonably and in good faith shall, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination shall be deemed to be prima facie correct;

(vi) upon request, the Agent shall deliver a statement detailing any of the payments to the Lenders referred to herein;

(vii) all payments by the Agent to a Lender hereunder shall be made to such Lender at its address set out herein unless notice to the contrary is received by the Agent from such Lender; and

(viii) if the Agent has received a payment from the Borrower on a Business Day (not later than the time required for the receipt of such payment as set out in this Agreement) and fails to remit such payment to any Lender entitled to receive its Proportionate Share of such payment on such Business Day, the Agent agrees to pay interest on such late payment at a rate determined by the Agent in accordance with prevailing banking industry practice on interbank compensation.

(b) The Borrower hereby irrevocably authorizes the Agent to debit any account maintained by it with the Agent in order to make payments to the Lenders as contemplated herein, if such Borrower has not paid such amount within one (1) Business Day after receipt from the Agent of a written request for such payment.

(c) The Agent may in its sole discretion from time to time make adjustments in respect of any Lender's share of a Drawdown, Conversion, Rollover or Repayment under any Facility or Tranche in order that the Outstanding Principal due to such Lender under such Facility or Tranche shall be approximately in accordance with such Lender's Proportionate Share of such Facility or Tranche.

11.5 Protection of Agent

(a) Unless the Agent has actual knowledge or actual notice to the contrary, it may assume that each Lender's address set out in the signatures pages attached hereto is correct, unless and until it has received from such Lender a notice designating a different address.

(b) The Agent may engage and pay for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained (and to the extent that such costs are not recovered from the

Borrower pursuant to this Agreement, each Lender agrees to reimburse the Agent in such Lender's Proportionate Share of such costs).

(c) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely as to matters of fact which might reasonably be expected to be within the knowledge of any Loan Party upon a statement contained in any Credit Document.

(d) Unless the Agent has actual knowledge or actual notice to the contrary, it may rely upon any communication or document believed by it to be genuine.

(e) The Agent may refrain from exercising any right, power or discretion vested in it under this Agreement unless and until instructed by the Required Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised (provided that such instructions shall be required to be provided by all of the Lenders in respect of any matter for which the unanimous consent of the Lenders is required as set out herein).

(f) The Agent may refrain from exercising any right, power or discretion vested in it which would or might in its sole and unfettered opinion be contrary to any law of any jurisdiction or any directive or otherwise render it liable to any Person, and may do anything which is in its opinion in its sole discretion necessary to comply with any such law or directive.

(g) The Agent may refrain from acting in accordance with any instructions of the Required Lenders to begin any legal action or proceeding arising out of or in connection with this Agreement or take any steps to enforce or realize upon any Security, until it shall have received such security as it may reasonably require (whether by way of payment in advance or otherwise) against all costs, claims, expenses (including legal fees) and liabilities which it will or may expend or incur in complying with such instructions.

(h) The Agent shall not be bound to disclose to any Person any information relating to the Loan Parties or any Related Person if such disclosure would or might in its opinion in its sole discretion constitute a breach of any law or regulation or be otherwise actionable at the suit of any Person.

(i) The Agent shall not accept any responsibility for the accuracy and/or completeness of any information supplied in connection herewith or for the legality, validity, effectiveness, adequacy or enforceability of any Credit Document and shall not be under any liability to any Lender as a result of taking or omitting to take any action in relation to any Credit Document except in the case of the Agent's gross negligence or wilful misconduct.

11.6 Duties of Agent

The Agent shall:

(a) as a non-fiduciary agent for the Borrower, maintain a record of the Outstanding principal owing to each Lender (including the interest of each Lender in all outstanding Syndicated Letters of Credit), which record shall conclusively be presumed to be correct and accurate, absent manifest error;

(b) hold and maintain the Security to the extent provided in Section 11.2;

(c) provide to each Lender copies of all financial information received from the Borrower promptly after receipt thereof, and copies of any Drawdown Requests, Conversion Notices, Rollover Notices, Repayment Notices and other notices received by the Agent from the Borrower upon request by any Lender;

(d) promptly advise each Lender of Advances required to be made by it hereunder and disburse all Repayments to the Lenders hereunder in accordance with the terms of this Agreement;

(e) promptly notify each Lender of the occurrence of any Default or Event of Default of which the Agent has actual knowledge or actual notice;

(f) at the time of engaging any agent, receiver, receiver-manager, consultant, monitor or other party in connection with the Security or the enforcement thereof, obtain the agreement of such party to comply with the applicable terms of this Agreement in carrying out any such enforcement activities and dealing with any Proceeds of Realization;

(g) account for any monies received by it in connection with this Agreement, the Security and any other agreement delivered in connection herewith or therewith;

(h) each time the Borrower requests the written consent of the Lenders in connection with any matter, use its best efforts to obtain and communicate to such Borrower the response of the Lenders in a reasonably prompt and timely manner having due regard to the nature and circumstances of the request;

(i) give written notice to the Borrower in respect of any other matter in respect of which notice is required in accordance with or pursuant to this Agreement, promptly or promptly after receiving the consent of the Lenders, if required under the terms of this Agreement;

(j) except as otherwise provided in this Agreement, act in accordance with any instructions given to it by the Required Lenders;

(k) if so instructed by the Required Lenders, refrain from exercising any right, power or discretion vested in it under this Agreement or any document incidental thereto; and

(l) call a meeting of the Lenders at any time not earlier than five (5) days and not later than thirty (30) days after receipt of a written request for a meeting provided by any Lender.

11.7 Lenders' Obligations Several; No Partnership

The obligations of each Lender under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders of any of their respective obligations hereunder. No Lender shall be responsible for the obligations of any other Lender hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership.

11.8 Sharing of Information

The Agent and the Lenders may share among themselves any information they may have from time to time concerning the Loan Parties whether or not such information is confidential; but shall have no obligation to do so (except for any obligations of the Agent to provide information to the extent required in this Agreement).

11.9 Acknowledgement by the Borrower

The Borrower hereby acknowledges notice of the terms of the provisions of this Article XI and agrees to be bound hereby to the extent of its obligations hereunder.

11.10 Amendments to Article XI

The Agent and the Lenders may amend any provision in this Article XI, except Section 11.1, without prior notice to or the consent of the Borrower, and the Agent shall provide a copy of any such amendment to the Borrower reasonably promptly thereafter; provided however if any such amendment would materially adversely affect any rights, entitlements, obligations or liabilities of the Borrower, such amendment shall not be effective until the Borrower provides its written consent thereto, such consent not to be unreasonably withheld or arbitrarily delayed.

11.11 Deliveries, etc.

As between the Loan Parties on the one hand, and the Agent and the Lenders on the other hand:

(a) all statements, certificates, consents and other documents which the Agent purports to deliver to a Loan Party on behalf of the Lenders shall be binding on each of the Lenders, and none of the Loan Parties shall be required to ascertain or confirm the authority of the Agent in delivering such documents;

(b) all certificates, statements, notices and other documents which are delivered by a Loan Party to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders; and

(c) all payments which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been duly delivered to each of the Lenders.

11.12 Agency Fee

The Borrower hereby agrees to pay to the Agent an annual agency fee in such amount as may be agreed in writing from time to time between the Borrower and the Agent, payable in advance on the date of this Agreement and annually on each anniversary date thereafter during the term of this Agreement.

11.13 Limitation on Rights of Hedge Providers

No Hedge Provider shall be entitled to vote on, consent to, or provide instructions to the Agent on any matter under or in connection with this Agreement unless the only Obligations outstanding are Permitted Lender Hedge Obligations. A Hedge Provider shall be entitled to participate in the Realization Proceeds in accordance with Section 11.3 but cannot vote on consent to, or provide instructions to the Agent on any matter under or in connection with any enforcement action under any Credit Document. Notwithstanding the foregoing, nothing in this Section 11.13 shall limit any other rights or remedies any Hedge Provider may have under a Permitted Lender Hedge to which it is a party or Applicable Law.

ARTICLE XII
CBA MODEL PROVISIONS

12.1 CBA Model Provisions Incorporated by Reference

The CBA Model Provisions (except for the footnotes contained therein) form part of this Agreement and are incorporated herein by reference, subject to the following variations:

(a) Each term set out below which is used as a defined term in the CBA Model Provisions shall be deemed to have been replaced as set out below, and for greater certainty, such replacement term shall have the meaning ascribed thereto in Section 1.1 of this Agreement:

"Administrative Agent" shall be replaced by "Agent";

"Agreement" shall be replaced by "Agreement";

"Applicable Percentage" shall be replaced by "Proportionate Share";

"Issuing Bank" shall be replaced by "Issuing Bank";

"Loan" shall be replaced by "Advance";

"Loan Documents" shall be replaced by "Credit Documents";

"Obligors" shall be replaced by "Loan Parties" (and all necessary changes required by the context shall have been deemed to have been made)

"Permitted Lien" shall be replaced by "Permitted Encumbrances";

"Provisions" shall be replaced by "CBA Model Provisions"; and

"Required Lenders" shall be replaced by "Required Lenders".

(b) "Pro rata share", "rateably" and similar terms in the CBA Model Provisions shall mean "Proportionate Share" as defined in Section 1.1 of this Agreement, if the context requires.

(c) The terms "Related Parties" and "Related Party" in the CBA Model Provisions shall be deemed to have the meanings ascribed to the defined terms "Related Persons" and "Related Person" in this Agreement.

(d) Paragraphs 3.2(f), 3.5 (relating to LIBO Rate Loan provisions) and 5(iii)(y) of the CBA Model Provisions are hereby deleted and of no force or effect.

(e) The parties hereto acknowledge and agree that:

(i) the consultation rights of the Borrower referred to in Paragraph 7.7(1) of the CBA Model Provisions shall be deemed to exist only if no Default or Event of Default hereunder has occurred and is continuing, and shall be exercised by the Borrower, acting reasonably,

(ii) the indemnity contained in Paragraph 9(b) of the CBA Model Provisions is in addition to and not in substitution for the indemnities contained elsewhere in this Agreement,

(iii) the provisions relating to "LIBO Rate Loans", the "LIBO Rate" and "Base Rate Loans" are hereby deleted;

(iv) notwithstanding Paragraph 7.3(l) of the CBA Model Provisions and footnote 6, the Agent shall take such steps as are necessary to perfect and maintain perfection of the Security in accordance with Section 11.2 of this Agreement;

(v) the processing and recording fee payable to the Agent by the assignor pursuant to Paragraph 10(b)(vi) of the CBA Model Provisions shall be deemed to be $3,500 per each such assignment; and

(A) for the purpose of the CBA Model Provisions, "Credit Documents" includes Permitted Lender Hedges.

12.2 Inconsistencies with CBA Model Provisions

To the extent that there is any inconsistency between a provision of this Agreement and a provision of the CBA Model Provisions, the provision of this Agreement shall govern. For greater certainty, a provisions of this Agreement and a provision of the CBA Model Provisions shall be considered to be inconsistent if both relate to the same subject-matter and the provisions in the CBA Model Provisions imposes more onerous obligations or restrictions than the corresponding provision in this Agreement.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 Capitalized Terms

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

13.2 Severability

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

13.3 Amendment, Supplement or Waiver

No amendment, supplement or waiver of any provision of the Credit Documents (other than Permitted Lender Hedges), nor any consent to any departure by any Loan Party therefrom, shall in any event be effective unless it is in writing, makes express reference to the provision affected thereby and is signed by the Agent on behalf of the Lenders or Required Lenders, as the case may be, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver or act or omission of the Agent or the Lenders or any of them shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or breach by such Loan Party of any provision of the Credit Documents or the rights resulting therefrom.

13.4 Governing Law

This Agreement and each of the Credit Documents, except those which expressly provide otherwise, shall be conclusively deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with and governed by the laws of the Province of Alberta and the laws of Canada applicable therein. Each party to this Agreement hereby irrevocably and unconditionally attorns to the non-exclusive jurisdiction of the courts of Alberta and all courts competent to hear appeals therefrom.

13.5 This Agreement to Govern

In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other Credit Document, the provisions of this Agreement shall govern to the extent necessary to remove the conflict. Provided however, that a conflict or inconsistency shall not be deemed to exist only by reason of one of the Credit Documents not providing for such matter.

13.6 Expenses of Agent and Lenders

Whether or not the transactions contemplated by this Agreement are completed or any Advance has been made, the Borrower hereby agrees to pay on demand by the Agent from time to time all reasonable expenses incurred by the Agent or any Lender in connection with this Agreement, the Security and all documents contemplated hereby, specifically including: expenses incurred by the Lenders in respect of due diligence, appraisals, insurance consultations, credit reporting and responding to demands of any Governmental Authority; reasonable legal expenses in connection with the preparation and interpretation of this Agreement and the Security and the administration of the Facilities generally, including the preparation of waivers and partial discharges of Security; and all legal expenses (on a solicitor and his own client basis) in connection with the protection and enforcement of the Security. The Borrower hereby authorizes the Agent to debit its account in order to pay any such expenses if such amount is not paid in full by such Borrower within thirty (30) days after receipt of a written request from the Agent for payment of such amount.

13.7 General Indemnity

In addition to any other liability of the Borrower hereunder, the Borrower hereby agrees to indemnify and save harmless the Indemnitees from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable legal fees on a solicitor and his own client basis) of any kind or nature whatsoever (but excluding any consequential damages and damages for loss of profit) which may be imposed on, incurred by or asserted against the Indemnitees (except to the extent arising from the gross negligence or wilful misconduct of such Indemnitees) which relate or arise out of or result from:

(a) any failure by the Borrower to pay and satisfy its Obligations including, without limitation, any costs or expenses incurred by reason of the liquidation or re-employment in whole or in part of deposits or other funds required by the Lenders to fund or maintain the Facilities or as a result of such Borrower's failure to take any action on the date required hereunder or specified by it in any notice given hereunder;

(b) any investigation by Governmental Authorities or any litigation or other similar proceeding related to any use made or proposed to be made by such Borrower of the proceeds of any Advance; and

(c) any instructions given to any Lender to stop payment on any cheque issued by the Borrower or to reverse any wire transfer or other transaction initiated by such Lender at the request of such Borrower.

13.8 Environmental Indemnity

In addition to any other liability of the Borrower hereunder, the Borrower hereby agrees to indemnify and save harmless the Indemnitees from and against:

(a) any losses suffered by them for, in connection with, or as a direct or indirect result of, the failure of any Loan Party to comply with all requirements of Environmental Law;

(b) any losses suffered by the Indemnitees for, in connection with, or as a direct or indirect result of, the presence of any Hazardous Material situated in, on or under any Property owned by any Loan Party or upon which it carries on business, specifically including any diminution in value of the business, property and assets of such Person; and

(c) any and all liabilities, losses, damages, penalties, expenses (including reasonable legal fees) and claims which may be paid, incurred or asserted against the Indemnitees for, in connection with, or as a direct or indirect result of, any legal or administrative proceedings with respect to the presence of any Hazardous Material on or under any Property owned by any Loan Party or upon which it carries on business, or the discharge, emission, spill, radiation or disposal by any Loan Party of any Hazardous Material into or upon any land, the atmosphere, or any watercourse or body of water; including the costs of defending and/or counterclaiming or claiming against third parties in respect of any action or matter and any cost, liability or damage arising out of a settlement entered into by the Indemnitees of any such action or matter;

except to the extent arising from the gross negligence or wilful misconduct of such Indemnitees.

13.9 Survival of Certain Obligations despite Termination of Agreement

The termination of this Agreement shall not relieve the Borrower from its obligations to the Agent, the Lenders and the Hedge Providers arising prior to such termination, such as obligations arising as a result of or in connection with any breach of this Agreement, any failure to comply with this Agreement or the inaccuracy of any representations and warranties made or deemed to have been made prior to such termination, and obligations arising pursuant to all indemnity obligations contained herein. Without limiting the generality of the foregoing, the obligations of the Borrower to the Agent and the Lenders arising under or in connection with Sections 13.7 and 13.8 of this Agreement and section 3.2 of the CBA Model Provisions shall continue in full force and effect despite any termination of this Agreement.

13.10 Interest on Miscellaneous Amounts

If the Borrower fails to pay any amount payable hereunder (other than principal, interest thereon or interest upon interest which is payable as otherwise provided in this Agreement) on the due date, the Borrower, shall, on demand, pay interest on such overdue amount to each Lender from and including such due date up to but excluding the date of actual payment, both before and after demand, default or judgment, at (i) a rate of interest per annum equal to the Base Rate plus 2%, compounded monthly, for amounts in U.S. Dollars or (ii) a rate of interest per annum equal to the Prime Rate plus 2%, compounded monthly, for amounts in Cdn Dollars or any other currency.

13.11 Address for Notice

Notice to be given under the Credit Documents to any Loan Party or the Agent shall be given in accordance with Paragraph 8 of the CBA Model Provisions. For the purposes hereof, notice shall be given to the parties hereto at the addresses specified beside their respective signatures to this Agreement, or in each case at such other mailing or facsimile address as each party from to time may notify the others as aforesaid.

13.12 Time of the Essence

Time shall be of the essence in this Agreement.

13.13 Further Assurances

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

13.14 Term of Agreement

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

13.15 Payments on Business Day

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

13.16 Counterparts and Facsimile

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. For the purposes of this Section 13.16, the delivery of a facsimile or electronic copy of an executed counterpart of this Agreement shall be deemed to be valid execution and delivery of this Agreement, but the party delivering a facsimile or electronic copy shall deliver an original copy of this Agreement as soon as possible after delivering the facsimile or electronic copy.

13.17 Statute References

All references herein to a statute include, unless otherwise stated, regulations passed or in force pursuant thereto and any amendments to such statute or to such regulations from time to time, and any legislation or regulations substantially replacing the same or substantially replacing any specific provision to which such reference is made.

13.18 Entire Agreement

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

13.19 Tombstone Marketing

For the purposes of "tombstone marketing", the Borrower authorizes and consents to the reproduction, disclosure and use by the Lenders and the Agent of its name, identifying logo, and the Facilities (other than the amount of the Total Commitment) to enable the Lenders to publish promotional "tombstones". The Borrower acknowledges and agrees that the Lenders shall be entitled to determine, in their discretion, whether to use such information, that no compensation will be payable by the Lenders or the Agent in connection therewith, and that the Lenders and the Agent shall have no liability whatsoever to the Borrower or any of its employees, officers, directors, Affiliates or shareholders in obtaining and lawfully using such information as contemplated herein.

13.20 Acknowledgement

The Borrower acknowledges that the Facilities are for use by the Borrower, and will be used by the Borrower, only for business purposes.

13.21 Amendment and Restatement

Effective as of the Effective Date, the Original Credit Agreement (i) is hereby amended and restated as set forth herein without in any way affecting the rights or obligations of any party which may have accrued as of the Effective Date pursuant to the provisions of such agreement prior to their amendment hereby, and (ii) is, as so amended and restated, ratified and confirmed.

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

[signature pages follow]

Address for Notice

Black Diamond Limited Partnership
2000 715 5th Ave SW
Calgary, AB T2P 2X6

Attention: Chief Financial Officer
Facsimile: 403-264-9281

BLACK DIAMOND LIMITED PARTNERSHIP, by its general partner, Black Diamond Group Inc., as Borrower

By: ______________________
Title:

Address for Notice

Black Diamond Group Limited
2000 715 5th Ave SW
Calgary, AB T2P 2X6

Attention: Chief Financial Officer
Facsimile: 403-264-9281

BLACK DIAMOND GROUP LIMITED, as Guarantor

By: ______________________
Title:

Address for Notice

Black Diamond Group Inc.
2000 715 5th Ave SW
Calgary, AB T2P 2X6

Attention: Chief Financial Officer
Facsimile: 403-264-9281

BLACK DIAMOND GROUP INC., as Guarantor

By: ______________________
Title:

Address for Notice	**1373901 ALBERTA LTD.**, as Guarantor
Black Diamond Limited Partnership 2000 715 5th Ave SW Calgary, AB T2P 2X6	By: __________ Title:
Attention: Chief Financial Officer Facsimile: 403-264-9281	
Address for Notice	**BLACK DIAMOND ENERGY SERVICES INC.**, as Guarantor
Black Diamond Group Limited 2000 715 5th Ave SW Calgary, AB T2P 2X6	By: __________ Title:
Attention: Chief Financial Officer Facsimile: 403-264-9281	
Address for Notice	**BOXX MODULAR INC.**, as Guarantor
Black Diamond Group Limited 2000 715 5th Ave SW Calgary, AB T2P 2X6	By: __________ Title:
Attention: Chief Financial Officer Facsimile: 403-264-9281	

Address for Notice

Bank of Montreal
Corporate Finance Division, Prairies
9th Floor, 350 – 7th Ave. S.W.
Calgary, AB T2P 3N9

Attention: Director
Facsimile: 403-234-1634

BANK OF MONTREAL,
as Lender

By: [signature]
Title: Director, Corporate Finance

4136224_12

Address for Notice

HSBC Bank Canada
407-8th Avenue S.W.
Calgary, AB T2P 1E5

Attention: Senior Account Manager, Energy Financing
Facsimile: 403-693-8561

HSBC BANK CANADA,
as Lender

By: ______________________
Title: Senior Account Manager, Energy Financing

By: ______________________
Title: Assistant Vice President, Energy Financing

BANK OF MONTREAL,
as Agent

By:
Title: ~~Director~~, Corporate Finance Underwriting and
FOR Syndication

__Address for Notice__

Bank of Montreal
Corporate Finance Underwriting and
Syndication
100 King Street West, 11th Floor
Toronto, ON M1M 2V2

Attention: Director
Facsimile: 416-360-7168

SCHEDULE "A"

COMMITMENTS OF LENDERS
(expressed in Canadian Dollars)

Name of Lender	Operating Facility Commitment	Swingline Facility Commitment	Capex Facility Commitment	TOTAL
Bank of Montreal	$[redacted]	$[redacted] (sublimit of Operating Facility)	$[redacted]	$[redacted]
HSBC Bank Canada	$[redacted]	$[redacted]	$[redacted]	$[redacted]
	$[redacted]	$[redacted]	$[redacted]	$[redacted]

SCHEDULE "B"

COMPLIANCE CERTIFICATE

TO: BANK OF MONTREAL, as Agent

Ladies and Gentlemen:

1. We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as Borrower, Black Diamond Group Limited and certain other guarantors from time to time party thereto, as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as Lenders, and the Agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

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

(a) the representations and warranties set forth in Article VIII of the Credit Agreement are in all material respects true and correct on the date hereof;

(b) the Borrower has performed or observed or caused to be performed or observed the covenants set forth in the Credit Agreement to be performed or observed by it to the date hereof; and

(c) there has not occurred any unremedied Default or Event of Default.

3. As at [insert March 31, June 30, September 30 or December 31, as applicable], 20____ pursuant to Section 9.2 of the Credit Agreement:

(a) the Current Ratio is •:•,

(b) the Total Funded Debt to EBITDA Ratio is •:•,

(c) the Fixed Charge Coverage Ratio is •:•,

(d) the Tangible Net Worth of BD Limited is •,

(e) the aggregate Capital Expenditures during this Fiscal Year does not exceed [insert (i) or (ii) as applicable]:

(i) $[redacted] in respect of the Fiscal Year ended December 31, 2009, or

(ii) a specified dollar amount to be established by the Required Lenders based on their annual review, for each succeeding Fiscal Year,

(f) attached hereto is the management discussion and explanation of the variance of:

(i) the actual results of operations for the Fiscal Quarter ended on the date set forth in the first line of this Section 3 from the budget for such period approved by the Lenders; and

(ii) the results of operations for the Fiscal Quarter ended on the date set forth in the first line of this Section 3 from the Fiscal Quarter ended one year prior.

Particulars of the calculation of each of the above ratios and amounts are as set out on Exhibit "A" attached hereto.

4. The Designated New Equity raised since the date of the Credit Agreement is • (particulars of which are set out on Exhibit "B" attached hereto).

5. [For reset occasions only] Based on the Total Funded Debt to EBITDA Ratio in Section 3(b) above, the Applicable Margin for all Facilities shall be set as for Level •.

6. The particulars of all dispositions, Acquisitions (including any Funded Acquisitions) and Capital Expenditures made by the Borrower, BD Limited, any Partner or any Material Subsidiary during the last Fiscal Quarter, and the aggregate of all net proceeds of any dispositions in the current Fiscal Year, are attached hereto.

7. The particulars of all Distributions made by the Loan Parties during the last Fiscal Quarter and the aggregate of all Distributions made by the Loan Parties in the current Fiscal Year, are attached hereto, and the declaration, payment or making each such Distribution was done in compliance with Section 9.9.

8. For the [Fiscal Quarter or Fiscal Year] ending [insert March 31, June 30, September 30 or December 31, as applicable], 20____, pursuant to Section 9.3, the difference between the consolidated financial results of BD Limited and the unconsolidated financial results of the Borrower is equal to or less than one percent (1.0%).

9. The particulars of all Hedge Agreements entered into by the Borrower are attached hereto as Exhibit "C".

10. There have been no changes to Schedule "I" to the Credit Agreement **[since the date of the last Compliance Certificate delivered] [other than those attached hereto].**

11. There have been no changes to Schedule "J" to the Credit Agreement **[since the date of the last Compliance Certificate delivered] [other than those attached hereto].**

12. The forecasted amount of U.S. Dollar denominated receivables (net of all goods and services tax, harmonized sales taxes and other sales taxes) owing to a Loan Party by an account debtor domiciled in the United States of America, for the next four Fiscal Quarters is • (particulars of which are set out on Exhibit "D" attached hereto).

DATED this __________day of ____________________, 2__.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

Name: ____

Title: ____

Exhibit "C" to Compliance Certificate

HEDGING AGREEMENTS

	Counterparty	Master Agreement (if any)	Transaction Date	Term	Notional Amount	Interest Rate/ Exchange Rate/ Other hedge details
1.						
2.						

SCHEDULE "C"

DRAWDOWN, CONVERSION OR ROLLOVER NOTICE

TO: ☐ BANK OF MONTREAL, as Agent

☐ BANK OF MONTREAL, as Swingline Lender

Ladies and Gentlemen:

1. We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as Borrower, Black Diamond Group Limited and certain other guarantors from time to time party thereto, as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as Lenders, and the Agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. The Borrower hereby requests the following: ☐ Drawdown
☐ Rollover
☐ Conversion

(a) Date: ______________________

(b) Applicable Facility(s): ______________________

(c) Total Amount (indicate currency/currencies): ______________________

(i) Amount allocated to the Swingline Lender: ______________________

(ii) Amount allocated to the Operating Lenders: ______________________

(iv) Amount allocated to the Capex Lenders: ______________________

(d) Type of Advance: ______________________

(e) Maturity Date (if applicable): ______________________

(f) Borrower's account(s) to be credited if applicable: ______________________

(g) In the case of an Advance, Conversion or Rollover of Bankers' Acceptances, the Borrower intends to market the Bankers' Acceptances provided and accepted pursuant to this notice: ☐ Yes ☐ No

(h) Special Instructions (if any): ______________________

3. [For Drawdowns only] The representations and warranties set forth in Article VIII of the Credit Agreement are true and correct in all material respects on the date hereof.

4. The Borrower shall use the proceeds of any Advance only for the purposes set out in Sections 2.2 and 2.6 of the Credit Agreement.

5. There is not any continuing Default or Event of Default. [except - describe]

DATED this ______ day of __________________ 20__.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

Per: ________________________________

Name: ________________________________

Title: ________________________________

SCHEDULE "D"

REPAYMENT NOTICE

TO: ☐ BANK OF MONTREAL, as Agent

Dear Sirs:

1. We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as Borrower, Black Diamond Limited and certain other guarantors from time to time party thereto, as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as Lenders, and the Agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. Pursuant to Article III of the Credit Agreement, the Borrower hereby gives notice of the following repayment:

(a) Date of repayment: ______________________

(b) Applicable Facility(s): ______________________

Cdn$•/ U.S.$• to the Operating Facility: ______________________
Cdn$•/ U.S.$• to the Capex Facility: ______________________

(c) Type of Advance: [specify by Facility] ______________________

(d) Total Amount of repayment: ______________________

(f) Borrower's account(s) to be debited (if applicable): ______________________

(g) Special Instructions (if any): ______________________

DATED this __________ day of ____________________, •.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

Per:______________________________
Name:
Title:

SCHEDULE "E"

REQUEST FOR AN OFFER OF EXTENSION

TO: ☐ BANK OF MONTREAL, as Agent

Ladies and Gentlemen:

We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as Borrower, Black Diamond Group Limited and certain other guarantors from time to time party thereto, as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as Lenders, and the Agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

We hereby give notice of our request for an offer of extension of the Extendible Period for a further period of [• days] after, and consequent extension of, **[the Maturity Dates and/or the Capex Facility Term-Out Date]**, pursuant to Section 4.1 of the Credit Agreement.

Attached hereto are annual operating budgets for the next two succeeding Fiscal Years, including Capital Expenditure budgets, with respect to BD Limited on a consolidated basis.

As of the date hereof, there is no continuing Default or Event of Default.

DATED this __________day of ___________________, •.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

By: ________________________________
Name:
Title:

SCHEDULE "F"

RECEIVABLES CERTIFICATE

TO: BANK OF MONTREAL, as Agent

Ladies and Gentlemen:

1. We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as borrower (the "**Borrower**"), Black Diamond Group Limited and certain other guarantors from time to time party thereto as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as lenders, and Bank of Montreal, as agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. Attached hereto is a listing of all Eligible Accounts Receivable, as required by Section 9.4(g) of the Credit Agreement.

3. Attached hereto is a listing of all Eligible U.S. Accounts Receivable, as required by Section 9.4(g) of the Credit Agreement.

4. Attached hereto are copies of the monthly statements regarding the U.S. Bank Accounts, as required by Section 9.4(g) of the Credit Agreement.

5. The Borrower hereby confirms that the principal amount of all Advances, in aggregate, under the Operating Facility does not exceed, and has not at any time exceeded, the Operating Facility Limit (as evidenced by a schedule attached hereto confirming its Operating Facility Borrowing Base calculation).

DATED this __________ day of ____________________, •.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

Per ____
Name:
Title:

SCHEDULE "G"

CAPEX BORROWING BASE CERTIFICATE

TO: BANK OF MONTREAL, as Agent

Ladies and Gentlemen:

1. We refer to the Second Amended and Restated Credit Agreement dated as of December 31, 2009 made among Black Diamond Limited Partnership, as borrower (the "**Borrower**"), Black Diamond Group Limited and certain other guarantors from time to time party thereto as Guarantors, Bank of Montreal, HSBC Bank Canada and the other banks and financial institutions from time to time party thereto, as lenders, and Bank of Montreal, as agent, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All terms and expressions used herein but not otherwise defined shall have the same meanings herein as are ascribed thereto in the Credit Agreement.

2. Attached hereto is a listing of (i) quarterly changes to the Consolidated Net Tangible Capital Assets, indicating over which of such assets the Agent has a first priority Security Interest and (ii) net Book Value of Consolidated Net Tangible Capital Assets over which the Agent has a first priority Security Interest, in each case as required by Section 9.4(e) of the Credit Agreement.

3. Attached hereto is a listing of the Capital Assets (other than intangible assets, including without limitation, goodwill, patents, trademarks, intellectual property, organization expenses, trade names, deferred costs, deferred charges and other similar intangible assets) of the Loan Parties.

4. The Borrower hereby confirms that the principal amount of all Advances, in aggregate, under the Capex Facility does not exceed, and has not at any time exceeded, the Capex Facility Limit (as evidenced by a schedule attached hereto confirming its Capex Borrowing Base).

DATED this __________ day of ____________________, ●.

BLACK DIAMOND LIMITED PARTNERSHIP,
by its general partner,
Black Diamond Group Inc., as Borrower

Per ____
Name:
Title:

SCHEDULE "H"

CBA MODEL PROVISIONS

1. **Definitions**

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

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" means the credit agreement of which these Provisions form part.

"Applicable Law" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

"Applicable Percentage" means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be the percentage of the total outstanding Loans and participations in respect of Letters of Credit represented by such Lender's outstanding Loans and participations in respect of Letters of Credit.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

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

"Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

"**Eligible Assignee**" means any Person (other than a natural Person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 10.1(b) has been obtained.

"**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an Obligor hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower under Section 3.3(b), (ii) an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of a Loan that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.2(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from an Obligor with respect to such withholding tax pursuant to Section 3.2(a). For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto.[1]

"**Foreign Lender**" means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

"**Governmental Authority**" means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supranational bodies

[1] Please note that this definition of "Excluded Taxes" will result in Foreign Lenders not being grossed up for withholding taxes that exist at the time of execution and delivery of the Credit Agreement, except in the circumstances specified. If a loan is intended to be exempt from withholding tax as a "5/25" structure or otherwise, this premise should be specified in the Credit Agreement.

such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Issuing Bank" means the Person named elsewhere in this Agreement[2] as the issuer of Letters of Credit on the basis that it is "fronting" for other Lenders and not on the basis that it is the attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit. For greater certainty, where the context requires, references to "Lenders" in these Provisions include the Issuing Bank.

"Loan" means any extension of credit by a Lender under this Agreement, including by way of bankers' acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit.

"Obligors" means, collectively, the Borrower and each of the guarantors of the Borrower's obligations that are identified elsewhere in this Agreement.

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

"Participant" has the meaning assigned to such term in Section 10.1(d).

"Person" means any natural Person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Provisions" means these model credit agreement provisions.

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

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

2. <u>Terms Generally</u>

(1) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person

[2] Ensure that the Credit Agreement identifies the Issuing Bank or indicates that there is none.

shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in these Provisions to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, these Provisions, but all such references elsewhere in this Agreement shall be construed to refer to this Agreement apart from these Provisions, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(2) If there is any conflict or inconsistency between these Provisions and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

3. **Yield Protection**

3.1 **Increased Costs**

(a) **Increased Costs Generally**. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 3.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or

(iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

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

(b) **Capital Requirements**. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(c) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

3.2 **Taxes**.

(a) **Payments Subject to Taxes**. If any Obligor, the Administrative Agent, or any Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Obligor when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Obligor shall make any such deductions required to be made by it under Applicable Law and (iii) the Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) **Payment of Other Taxes by the Borrower**. Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) **Indemnification by the Borrower**. The Borrower shall indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative

Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) **Evidence of Payments**. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) **Status of Lenders**. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements, and (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the *Income Tax Act* (Canada) or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.

(f) **Treatment of Certain Refunds and Tax Reductions**. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

3.3 **Mitigation Obligations: Replacement of Lenders.**

(g) **Designation of a Different Lending Office.** If any Lender requests compensation under Section 3.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2 , then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(h) **Replacement of Lenders**[3]. If any Lender requests compensation under Section 3.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, if any Lender's obligations are suspended pursuant to Section 3.4 or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower pays the Administrative Agent the assignment fee specified in Section **[10(b)(vi)]**;

(ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its Loans and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.1 or payments required to be made pursuant to Section 3.2, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with Applicable Law.

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[3] Please note that the Breakfunding section in the Credit Agreement should expressly include any amount payable as a result of an assignment required by this Section.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.4 **Illegality**.

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Loan (or to maintain its obligation to make any Loan), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if conversion would avoid the activity that is unlawful, convert any Loans, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.5 **Inability to Determine Rates Etc**.

If the Required Lenders determine that for any reason a market for bankers' acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell bankers' acceptances or perform their other obligations under this Agreement with respect to bankers' acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of bankers' acceptances shall be and remain suspended until the Required Lenders determine and the Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

4. **Right of Setoff.**

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 4, it shall share the benefit received in accordance with Section 5 as if the benefit had been received by the Lender of which it is an Affiliate.

5. **Sharing of Payments by Lenders.**

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Loans and accrued interest thereon or other obligations hereunder greater than its pro rata share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest;

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and

(iii) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender[4], or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Obligor rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

6. Administrative Agent's Clawback

(a) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's share of such advance, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

(b) **Payments by Borrower; Presumptions by Administrative Agent**. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate

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[4] Those preparing Credit Agreements should consider whether this exclusion of proceeds of derivatives is appropriate in the particular circumstances of the Credit Agreement. It may be appropriate to provide for sharing of, for example, any net amount available after the termination of all derivatives entered into between the Obligators and a Lender and the setoff of resulting amounts owing by the Obligators and to the Obligators if there is more than one such derivative.

determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

7. **Agency**.

7.1 **Appointment and Authority**.

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Person identified elsewhere in this Agreement as the Administrative Agent[5] to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

7.2 **Rights as a Lender**.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.

7.3 **Exculpatory Provisions**.

(1) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents[6]. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the

[5] Ensure that the Credit Agreement identifies the Administrative Agent for the purpose of this reference.
[6] It is anticipated that the Credit Agreement will require the Borrower to be responsible for compliance with all requirements to maintain perfection of security.

Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(2) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.

(3) Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

7.4 **Reliance by Administrative Agent**.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

7.5 **Indemnification of Administrative Agent**.

Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

7.6 **Delegation of Duties**.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and their respective Affiliates. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

7.7 **Replacement of Administrative Agent**.

(1) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario or Montréal, Québec, or an Affiliate of any such Lender with an office in Toronto or Montréal. The Administrative Agent may also be removed at any time by the Required Lenders upon 30 days' notice to the Administrative Agent and the Borrower as long as the Required Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto or Montréal, or an Affiliate of any such Lender with an office in Toronto or Montréal.

(2) If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section 7.7(1), provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of

this Section 7 and of Section 9 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

7.8 **Non-Reliance on Administrative Agent and Other Lenders**.

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

7.9 **Collective Action of the Lenders**.

Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

7.10 **No Other Duties. etc**.

Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

8. Notices: Effectiveness; Electronic Communication

(a) **Notices Generally**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as-provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement[7] or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) **Electronic Communications**. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent[8], provided that the foregoing shall not apply to notices to any Lender of Loans to be made or Letters of Credit to be issued if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) **Change of Address. Etc**. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

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[7] Ensure that the Credit Agreement contains the contact information referred to.

[8] Administrative Agents may wish to prescribe procedures for electronic communications and disseminate those procedures to Lenders.

9. Expenses; Indemnity: Damage Waiver[9]

(a) **Costs and Expenses**. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by the Borrower**. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of

[9] A reference to this Section should be included in the Survival Section, if any, of the Credit Agreement.

competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 3.1, 3.2 and 9(a).

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the other provisions of this Agreement concerning several liability of the Lenders.

(d) **Waiver of Consequential Damages. Etc**. To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) **Payments**. All amounts due under this Section shall be payable promptly after demand therefore. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

10. Successors and Assigns

(a) **Successors and Assigns Generally**. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

(i) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, in the case of any assignment in respect of a revolving facility, or $1,000,000, in the case of any assignment in respect of a term facility, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consent to a lower amount (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-pro rata basis;

(iii) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;

(iv) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:

(A) in the case of an assignment of a Commitment relating to a revolving credit, the proposed assignee is itself already a Lender with the same type of Commitment,

(B) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to a non-revolving credit that is fully advanced, or

(C) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's Investor Services Inc., Standard & Poor's, a division of The McGraw-Hill Companies, Inc. and Dominion Bond Rating Service Limited, respectively;

(v) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and

(vi) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement[10] and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3 and 9, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(c) **Register**. The Administrative Agent shall maintain at one of its offices in Toronto, Ontario or Montréal, Québec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

[10] Ensure that the Credit Agreement specifies the amount of this fee.

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, an Obligor or any Affiliate of an Obligor[11]) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4 as though it were a Lender, provided such Participant agrees to be subject to Section 5 as though it were a Lender.

(e) **Limitations upon Participant Rights**. A Participant shall not be entitled to receive any greater payment under Section 3.1 and 3.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.2 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.2(e) as though it were a Lender.

(f) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11. **Governing Law: Jurisdiction: Etc.**

(a) **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the Province specified elsewhere in this Agreement[12] and the laws of Canada applicable in that Province.

(b) **Submission to Jurisdiction**. Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province specified elsewhere in this Agreement, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and

[11] Consideration should be given to the percentage of Lenders required to permit the sale of a participation to an Obligor or any Affiliate or Subsidiary of an Obligor.
[12] Ensure that the Credit Agreement identifies the Province referred to here and in paragraph (b) immediately below.

unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

(c) **Waiver of Venue**. Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12. WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Counterparts: Integration: Effectiveness: Electronic Execution

(a) **Counterparts: Integration: Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) **Electronic Execution of Assignments**. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act*, 2000 (Ontario) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.

14. Treatment of Certain Information: Confidentiality

(1) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(2) For purposes of this Section, "**Information**" means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such Person normally makes available in the course of its business of assigning identification numbers.

(3) In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide the information described on Exhibit B concerning the Borrower and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "**Assignment and Assumption**") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "**Assignor**") and [*Insert name of Assignee*] (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and operating loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: ______________________________

2. Assignee: ______________________________
[and is an Affiliate/Approved Fund of [*identify Lender*][1]]

3. Borrower(s): ______________________________

4. Administrative Agent: ____________________________, as the administrative agent under the Credit Agreement.

5. Credit Agreement: [The [*amount*] Credit Agreement dated as of ________ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]

[1] Select as applicable.

6. Assigned Interest:

Facility Assigned[2]	Aggregate Amount of Commitment/Loans for all Lenders[3]	Amount of Commitment/Loans Assigned[4]	Percentage Assigned of Commitment/Loans[5]	CUSIP Number
	$	$	%	
	$	$	%	
	$	$	%	

7. [Trade Date: ____________________][6]

[2] Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Agreement (e.g. "Revolving Credit Agreement", "Term Loan Commitment", etc.)
[3] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
[4] Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
[5] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
[6] To be completed if the Assignor and the Assignee intend that the minimum assignment is to be determined as of the Trade Date.

Effective Date: ________,20_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: ______________________________
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: ______________________________
Title:

[Consented to and][7] Accepted:

[NAME OF THE ADMINISTRATIVE AGENT],
as Administrative Agent

By: ______________________________
Title:

[Consented to:][8]

[NAME OF RELEVANT PARTY]

By: ______________________________
Title:

[7] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.
[8] To be added only if the consent of the Borrower and/or other parties (e.g. Operating Lender, L/C Issuer) is required by the terms of the Credit Agreement.

ANNEX 1 to Assignment and Assumption

[____________________][1]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

15. **Representations and Warranties.**

1.1 Assignor.

The Assignor (a) represents and warrants that (I) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document[2], (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee.

The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section ____ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender[3], attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

16. **Payments.**

[1] Describe Credit Agreement at option of Administrative Agent.
[2] The term "Loan Document" should be conformed to the term used in the Credit Agreement.
[3] The concept of "Foreign Lender" should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up.

From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

17. **General Provisions**.

This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

EXHIBIT B

LOAN MARKET DATA TEMPLATE

Recommended Data Fields — At Close
The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

<u>**Company Level**</u>
Issuer Name
Location
SIC (Cdn)
Identification Number(s)
Revenue

***Measurement of Risk**
- **S&P Sr. Debt**
- **S&P Issuer**
- **Moody's Sr. Debt**
- **Moody's Issuer**
- **Fitch Sr. Debt**
- **Fitch Issuer**
- S&P Implied (internal assessment)
- **DBRS**

Other Ratings
*Industry Classification
- Moody's Industry
- S&P Industry

Parent

Financial Ratios

<u>**Deal Specific**</u>
Currency/Amount
Date
Purpose
Financial Covenants

Target Company
Assignment Language
Law Firms
MAC Clause
Springing lien
Cash Dominion
Mandatory Prepays
Restrct'd Payments (Neg Covs)

Other Restrictions

<u>**Facility Specific**</u>
Currency/Amount
Type
Purpose
Term Out Option
Expiration Date
Facility Signing Date
Pricing
- **Base Rate(s) /Spread(s)/BA/LIBOR**
- **Initial Pricing Level**
- **Pricing Grid (tied to, levels)**
- **Grid Effective Date**

Fees
- **Participation Fee (tiered also)**
- **Commitment Fee**

Annual Fee
- **Utilization Fee**
- **LC Fee(s)**
- **BA Fee**

Prepayment Fee

Other Fees to Market

- Security
- **Secured/Unsecured**
- Collateral and Seniority of Claim
- Collateral Value

Guarantors
Lenders Names/Titles
Lender Commitment ($)
Committed/Uncommitted
Distribution Method
Amortization Schedule
Limit/Advance Rates
New Money Amount
Country of Syndication
Facility Rating (Loss given default)
- **S&P Bank Loan**
- **Moody's Bank Loan**
- **Fitch Bank Loan**
- **DBRS**
- **Other Ratings**

* These items would be considered useful to capture from an analytical perspective

SCHEDULE "I"

LOAN PARTY INFORMATION

Loan Party	Principal Place of Business or Chief Executive Office	Relevant Jurisdictions	Operating Accounts
Black Diamond Limited Partnership	2000 715 5th Ave SW Calgary, AB T2P 2X6	Alberta, British Columbia, Saskatchewan and Ontario	Bank of Montreal Account Number: [redacted] (Cdn Funds) Bank of Montreal Account Number: [redacted] (US Funds)
Black Diamond Group Limited	2000 715 5th Ave SW Calgary, AB T2P 2X6	Ontario and Alberta	Bank of Montreal Account Number: [redacted] (Cdn Funds)
Black Diamond Group Inc.	2000 715 5th Ave SW Calgary, AB T2P 2X6	Alberta, British Columbia, Saskatchewan and Ontario	Bank of Montreal Account Number: [redacted] (Cdn Funds)
1373901 Alberta Ltd.	2000 715 5th Ave SW Calgary, AB T2P 2X6	Alberta	NIL
Black Diamond Energy Services Inc.	2000 715 5th Ave SW Calgary, AB T2P 2X6	Alaska, Arizona, Colorado, Delaware, Montana, Nevada, North Dakota, South Dakota, Utah and Wyoming	NIL
Boxx Modular Inc.	2000 715 5th Ave SW Calgary, AB T2P 2X6	Alaska, Delaware, Colorado, Kansas, Montana, Nebraska, Nevada, North Dakota, South Dakota, Texas, Utah and Wyoming	Wells Fargo Account Number: [redacted] US Funds)

SCHEDULE "J"

REAL PROPERTY

Owned Real Property

Legal and Beneficial Owner	Municipal Address	Legal Description
NIL	NIL	NIL

Leased Real Property

1. 261180 Range Road 292 Balzac, Alberta;
2. Portion of Lot 6, Concession 3, NKR being Portion of Part 1, Plan 55R-8926, Township of Palpoonge, District of Thunder Bay, Ontario;
3. 1512 Larmier St., Denver Colorado 80202;
4. 11311 – 215 Street, Edmonton, Alberta;
5. 8901 – 102 Street, Clairmont, Alberta;
6. 400 Jones Road, Stoney Creek, Ontario; and
7. 2000, 715 – 5th Ave SW, Calgary, Alberta.

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