

EXECUTION COPY

CML HEALTHCARE INC.
as Borrower

and

TD SECURITIES
as Sole Lead Arranger and Bookmanager

and

THE INSTITUTIONS NAMED HEREIN AS LENDERS
as Lenders

and

THE TORONTO-DOMINION BANK
as Administration Agent

CAD374,422,080
AMENDED AND RESTATED
CREDIT AGREEMENT

January 1, 2011

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AMENDED AND RESTATED CREDIT AGREEMENT

THIS AGREEMENT is made as of January 1, 2011.

AMONG:

CML HEALTHCARE INC.
as Borrower

- and -

THE INSTITUTIONS NAMED HEREIN AS LENDERS
as Lenders

- and -

THE TORONTO-DOMINION BANK
as Administration Agent

BACKGROUND:

The Borrower, the Lenders and the Agent entered into a credit agreement made as of February 22, 2008 (the "**Existing Credit Agreement**") pursuant to which the Lenders made available to the Borrower (i) a one (1) year non-revolving bridge loan in the maximum principal amount of CAD75,000,000, (ii) a five (5) year non-revolving term loan in the maximum principal amount of CAD207,800,000 and USD66,622,080 and (iii) a committed five (5) year revolving term credit facility in the aggregate maximum principal amount of CAD100,000,000.

The Fund proposes to convert its organizational structure from that of an income fund to a corporate structure as outlined in its notice of special meeting and management information circular with respect to a plan arrangement involving the Fund and the Borrower dated November 1, 2010 (as changed and in effect on the date hereof, the "**CML Information Circular**").

The Borrower has requested the Lenders to agree to amend certain terms of the Existing Credit Agreement, including, among other things, to reflect the Borrower and its Subsidiaries after the Arrangement takes effect, and the Lenders have agreed to do so pursuant to this Agreement, which amends and restates the Existing Credit Agreement in its entirety.

NOW THEREFORE in consideration of the mutual obligations contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 General Definitions

Unless the context otherwise requires, in this Agreement:

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

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

“**Acquisition**” means an acquisition of all or any part of the business of another person, including any line of business or division of the assets comprised therein, in a single transaction, or in a series of transactions, related or not, whether by way of acquisition of assets or of Capital Stock of that person or by way of consolidation, merger or other business combination.

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

“**Affected Lender**” is used with the defined meaning assigned in Section 8.6 or 8.8 or Subsection 8.7.1, 8.7.2, 8.9.1 or 8.9.2, as applicable.

“**Affiliate**” means, at any time, and with respect to any person, any other person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first person, and, with respect to the Borrower, shall include any person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of the Borrower or any Subsidiary or any person of which the Borrower and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. Unless the context otherwise clearly requires, any reference to an “**Affiliate**” is a reference to an Affiliate of the Borrower.

“**Agency Fee Agreement**” means the agency fee agreement dated as of February 21, 2008 between the Borrower and the Agent providing for the payment of certain agency fees to the Agent.

“**Agent**” means TD acting in its capacity as administration agent under this Agreement for and on behalf of itself and the other Lenders, and not in its individual capacity as a Lender, or (as the context requires) any replacement for such administration agent that is appointed pursuant to Subsection 14.14.1.

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

For Canadian Dollars:

Toronto Dominion Bank
Toronto
SWIFT: TDOMCATTTOR
Cdn\$ Account No.: 0360-01-2301253
Favour: TD Bank, Toronto - Corporate Lending
Ref: CML Healthcare Inc.

For US Dollars:

Bank of America, New York
SWIFT: BOFAUS3N
US\$ Account No.: 6550-826-336
Account with: Toronto Dominion Bank, Toronto
SWIFT: TDOMCATTTOR
Favour: TD Bank Toronto - Corporate Lending
US\$ Account No.: 0360-01-2301447
Ref.: CML Healthcare Inc.

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

“Agreement” means this amended and restated credit agreement.

“Anti-Terrorism Order” means Executive Order No. 13,224 of September 24, 2001, Blocking Property and Prohibiting Transactions with persons Who Commit, Threaten to Commit or Support Terrorism, 66 U.S. Fed. Reg. 49, 079 (2001) as amended or supplemented by future executive orders.

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

“Applicable Margin” in relation to any form of Advance or Standby Fee as of any date means the percentage rate per annum determined in accordance with the table set forth below by reference to the Leverage Ratio most recently certified by the Borrower in a Compliance Certificate delivered to the Agent pursuant to Section 12.1.12, subject to change as provided for in Subsection 8.5.7; provided that **“Applicable Margin”** in relation to each form of Advance and Standby Fee on the date hereof and thereafter until changed in accordance with Subsection 8.5.7 means the percentage rate per annum set forth below by reference to Level III:

Level	Leverage Ratio	Floating Rate Loans	Isbor Loans, Acceptances and Standby Instruments	Standby Fee (Revolver Facility and Swing Line)
I	≤ 1.0:1	█ %	█ %	█ %
II	> 1.0:1 ≤ 2.0	█ %	█ %	█ %
III	> 2.0 ≤ 2.5	█ %	█ %	█ %
IV	> 2.5	█ %	█ %	█ %

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

“**Arrangement**” means the plan of arrangement set out in the Arrangement Agreement and the CML Information Circular.

“**Arrangement Agreement**” means the arrangement agreement dated as of October 25, 2010 between the Fund, CML Healthcare Inc. and 2260408 Ontario Limited approved by the Ontario Superior Court of Justice (Commercial List), as contemplated by the CML Information Circular.

“**ARS Entities**” means (i) American Radiology Services LLC, (ii) Radiology Alliance Delivery System, LLC, existing on the ARS Transactions Closing Date as a limited liability company formed under the laws of the State of Maryland and (iii) American Radiology Services of Delaware, Inc., existing on the ARS Transactions Closing Date as a corporation formed under the laws of the State of Delaware.

“**ARS Forward Agreements**” means, (A) prior to September 30, 2010: (i) the amended and restated certificate of incorporation of Raven Merger Corporation entered into on the ARS Transactions Closing Date; (ii) the sale agreement between the Borrower and CML US Holdings entered into on the ARS Transactions Closing Date; (iii) the forward agreement between the Borrower and CML US Holdings entered into on the ARS Transactions Closing Date; and (iv) the guarantee by American Radiology Services Inc. in favour of the Borrower entered into on the ARS Transactions Closing Date; and (B) on and after September 30, 2010: (i) the amended and restated certificate of incorporation of Raven Merger Corporation entered into on the ARS Transactions Closing Date; (ii) the sale agreement between the Borrower and CML US Holdings entered into on September 30, 2010; and (iii) the forward agreement between the Borrower and CML US Holdings entered into on September 30, 2010.

“**ARS Forward Transactions**” means the transactions contemplated to take place in strict compliance with the express terms and conditions of the ARS Forward

Agreements without regard to any material modification or waiver not consented to by the Required Lenders.

“ARS Transactions” means the transactions contemplated to take place in strict compliance with the express terms and conditions of the Merger Agreement without regard to any material modification or waiver not consented to by the Required Lenders.

“ARS Transactions Closing Date” means the date on which the ARS Transactions were completed in accordance with the Merger Agreement and the ARS Transactions Closing Date occurred.

“ARS Transactions Drawdowns” means the Drawdowns under the Term Facility to fund all or a portion of the consideration required to be paid by the Borrower to complete the ARS Transactions and certain fees and expenses relating thereto.

“Asset Disposition” means any Transfer by the Borrower or a Subsidiary, except (i) any (A) Transfer from a Subsidiary which is an Obligor to the Borrower or to another Obligor and (B) Transfer from a Subsidiary which is not an Obligor to the Borrower or any Subsidiary, so long as immediately before and immediately after the consummation of any such Transfer and giving effect thereto, no Default or Event of Default exists; and (ii) any Transfer made in the ordinary course of business and involving only property that is either (A) inventory held for sale or (B) land, equipment, fixtures, supplies or materials no longer required in the operation of the business of the Borrower or any of its Subsidiaries or that is surplus or obsolete.

“Auditors” means the firm of PricewaterhouseCoopers LLP or such other nationally recognized firm of chartered accountants as the Borrower may designate from time to time as its auditors.

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

“Availability Period” for a Credit Facility means the period from (and including) the date hereof to (but excluding) (i) the Business Day preceding the Revolver Maturity Date in the case of the Revolver Facility and (ii) the Business Day preceding the Swing Line Maturity Date in the case of the Swing Line.

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

“BA Reference Rate” means (i) for each Relevant Lender that is one of the six largest Schedule I Canadian chartered banks, CDOR and (ii) for each Relevant

Lender that is not one of the six largest Schedule I Canadian chartered banks, CDOR plus one-tenth of one percent (0.10%) per annum.

“Bankruptcy Proceeding” means, with respect to any person, any proceeding contemplated by Section 13.1(h), (i) or (j) in relation to that person.

“Borrower” means CML Healthcare Inc., existing (i) prior to the date hereof as a corporation incorporated under the laws of the Province of Ontario and (ii) as at the date hereof as a corporation formed under the laws of the Province of Ontario pursuant to the Arrangement.

“Borrower’s Accounts” at any time means the applicable one of the accounts of the Borrower (i) most recently notified by the Borrower to the Agent and the Swing Line Lender as being the accounts to which the transfers to the Borrower pursuant to this Agreement are to be made if the Borrower is not maintaining current accounts with the Swing Line Lender at that time or (ii) maintained by the Borrower with the Swing Line Lender if the Borrower is maintaining current accounts with the Swing Line Lender at that time.

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

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

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

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

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

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

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

“CAD Term Facility” means the portion of the Term Facility in relation to which the commitments of the Term Lenders are expressed in CAD Dollars.

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

“Calvert” means Calvert Medical Imaging Center, a general partnership formed under the laws of the State of Maryland as at the date hereof.

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

“Canadian Anti-Money Laundering Legislation” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and any other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, including any guidelines or orders thereunder.

“Canadian Prime Rate” on any day means the variable nominal interest rate equal on such day to the percentage rate per annum determined by the Agent (rounded up, if necessary, to be expressed to two (2) decimal places to the nearest 1/100th of 1%) to be the greater of (i) the rate of interest which the Reference Lender establishes at that time as the reference rate of interest for determination of the interest rates it will charge for loans made in Canadian Dollars in Canada and which it refers to as its prime rate (or its equivalent or analogous such rate) or (ii) the sum of (A) the yearly rate of interest to which one month CDOR is equivalent plus (B) three quarters of one percent (0.75%).

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

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

“Capital Lease” means, at any time, a lease or similar arrangement which, in accordance with GAAP, would be capitalized.

“Capital Stock” means common shares, preferred shares or other equivalent equity interests (howsoever designated) in a body corporate, partnership, trust or other artificial body.

“Cash Management Agreement” means an agreement to which any Lender is party providing for cash management services to the Borrower or any of its Subsidiaries, including treasury, depository, overdraft, credit or debit card, electronic funds transfers and other cash management services.

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

“CDOR” in relation to any specified maturity of bankers’ acceptances on any day means the yearly rate of interest equivalent to the average of the yields (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100th of 1%) applicable to banker’s acceptances denominated in Canadian Dollars for that specified maturity quoted on the Reuters Money Market CDOR page under “Canadian Interbank Bid BA Rates” as of 10:00 a.m. on that day (or on the preceding Business Day, if such day is not a Business Day) or, if such page or service shall cease to be displayed or published, on such other page or service that displays or publishes Canadian interbank bid rates for bankers’ acceptances denominated in Canadian Dollars as the Agent may select. If no such average is displayed or published on any such page or service, CDOR will be determined by the Agent with reference to the Canadian interbank bid rate (rounded up, if necessary to be expressed to two (2) decimal places, to the nearest 1/100th of 1%) quoted by the Reference Lender as being the yearly rate of interest at which the Reference Lender was receiving bids (which it was prepared to accept) to sell its own bankers’ acceptances of the specified maturity issued by the Reference Lender in the relevant Canadian money markets as of 10:00 a.m. on such day (or on the preceding Business Day, if such day is not a Business Day).

“Certificate” from any person means a written certificate of that person signed by a Responsible Officer of that person.

“Change in Control” means (i) any person shall at any time after the date hereof hold a sufficient number of the voting rights attached to all outstanding Voting Capital Stock of the Borrower to Control the Borrower, and if a person holds more than 30% of the voting rights attached to all outstanding Voting Capital Stock of the Borrower, the person shall be deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to Control the

Borrower, or (ii) any person in combination with any other persons “acting in concert” (as contemplated by the *Securities Act* (Ontario) and as interpreted by Applicable Law), by virtue of an agreement, arrangement, commitment or understanding, shall at any time after the date hereof hold in total a sufficient number of the voting rights attached to all outstanding Voting Capital Stock of the Borrower to Control the Borrower, and, if a combination of persons hold more than 30% of the voting rights attached to all outstanding Voting Capital Stock of the Borrower, the combination of persons shall be deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to Control the Borrower.

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

“**Chesapeake**” means Upper Chesapeake Health Imaging, LLC, existing as at the date hereof as limited liability company formed under the laws of the State of Maryland.

“**Closing**” means the time when the Agent confirms to the Borrower and the Lenders that each of the conditions precedent to closing set forth in Section 10.1 have been met or (to the extent not met) waived by the Required Lenders.

“**Closing Notice**” is used with the defined meaning assigned in Section 10.1.

“**CML Information Circular**” is used with the defined meaning assigned in the Background to this Agreement.

“**CML US Holdings**” means Raven Holdings U.S., Inc., existing at Closing as a corporation formed under the laws of the State of Delaware.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

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

“**Compliance Certificate**” in respect of a Fiscal Quarter means a duly completed and signed Certificate of the Borrower substantially in the form attached as Schedule 6 (or in such other form to substantially similar effect as the Agent may accept) setting out, among other things, a statement for that Fiscal Quarter of the calculations of the financial tests set out in Section 12.3 and, commencing in respect of the first Fiscal Quarter after Closing, the calculation of the Distributable Cash Flow set out in Section 12.2.7(a).

“Confirmation” means a duly completed and signed confirmation of guarantees dated as of the date hereof from the Guarantors in the form of Schedule 11 (or in such other form to substantially similar effect as the Agent may accept).

“Constitutional Documents” in relation to any person that is an artificial body means the articles, any unanimous shareholder agreement, the limited liability, operating or members’ agreement or the partnership agreement, declaration of trust or equivalent documents governing the incorporation or formation, capacity, powers, assets and affairs of that person; together, in each case, with the by-laws or other documents, regulating the organization, Control or internal management of that person.

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

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

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

“Core Business” means any business similar or complementary to the healthcare diagnostic business carried on at the date hereof by the Borrower or any of its Subsidiaries, including the business of medical imaging and taking, collecting and laboratory testing of human samples, specimens and cultures, and the compilation and reporting of test results thereon.

“Corporate Cap” means the aggregate ‘base year amount’ from time to time of a medical laboratory, as such amount is defined and calculated pursuant to Ontario Regulation 552, as amended from time to time, being the maximum amount that the Ministry of Health will pay to a medical laboratory for services that are insured services under the *Health Insurance Act* (Ontario).

“Courts of Primary Jurisdiction” means the courts referred to in Subsection 15.15.1(a).

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

“Credit Facilities” means the Revolver Facility, CAD Term Facility, USD Term Facility and Swing Line.

“Debt” means, at any time, with respect to any person, without duplication and without regard to any interest component thereof (whether actual or imputed) that is not due and payable, the aggregate of the following amounts, each calculated at such time in accordance with GAAP on an unconsolidated basis, (but excluding, for greater certainty, operating leases, capital stock, whether or not preferred, any partnership or other ownership interest not referred to in (j) below and all trade accounts indebtedness and other liabilities incurred in the ordinary course of business, provided that such trade accounts and other liabilities are payable within 12 months of the date of their invoice):

- (a) money borrowed (including by way of overdraft) or indebtedness represented by notes payable and drafts accepted representing extensions of credit;
- (b) the face amount of all bankers' acceptances and similar instruments;
- (c) the amount of any indemnity or reimbursement obligations arising from or relating to letters of credit, letters of guarantee, legally binding comfort letters, Guarantees or surety bonds issued on behalf of such person;
- (d) all obligations (whether or not with respect to the borrowing of money) that are evidenced by bonds, debentures, notes or other similar instruments, whether or not any such instruments are convertible into capital, or that are not so evidenced, but that would be considered by GAAP to be indebtedness for borrowed money;
- (e) all obligations relating to borrowed money upon which interest charges are customarily paid by that person (including Purchase Money Obligations);
- (f) principal obligations as lessee under Capital Leases, all as determined in accordance with GAAP;
- (g) any deferred purchase price for property or services purchased (excluding trade payables and other liabilities incurred in the ordinary course of business);
- (h) all obligations under Sale/Leaseback Transactions;
- (i) liability in respect of any transfer of property or assets which has been made with recourse to the transferor to the extent of such recourse or any obligation to repurchase any property or assets or to purchase property or assets regardless of the delivery or non-delivery thereof;
- (j) any amount secured by a Lien, other than any Lien arising automatically by law to secure liabilities incurred in the ordinary course of business so

long as such liabilities are being contested in good faith and by appropriate proceedings or are paid or satisfied when due;

- (k) any obligation to purchase, redeem or otherwise retire or purchase for cancellation any shares of capital stock or any partnership or other ownership interests in such person at the option of the holder thereof, including any obligation to so purchase, redeem or otherwise retire or purchase for cancellation any shares of capital stock or partnership or ownership interests, but excluding any obligation under the ARS Forward Agreements;
- (l) the aggregate Out-of-the-Money Derivative Exposure of that person; and
- (m) any Guarantee (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business) of any part or all of an obligation included in items (a) through (l) above.

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

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

“Depreciation and Amortization Expenses” means, for any period, depreciation, amortization and other reductions to income of a person not involving an outlay of cash, determined on a consolidated basis in accordance with GAAP.

“Derivative” means any agreement (including any transaction contemplated thereby) now existing or hereafter entered into which is an interest rate swap, cap, floor or collar agreement, interest rate forward, future or option contract, cross-currency interest rate swap agreement or interest rate future or option contract, a spot or forward foreign exchange contract or any other derivative agreement relative to interest rates, foreign exchange, debt obligations, equities, commodities or other indices.

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

that relevant party, it is referred to herein as “**In-the-Money Derivative Exposure**”.

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

“**Disposition Value**” means, at any time, with respect to any asset and the Transfer thereof, the greater of (i) the fair market value thereof, valued at the time of such Transfer in good faith by the Borrower, and (ii) the Net Proceeds Amount derived from the Transfer thereof.

“**Distributable Cash Flow**” is used with the defined meaning assigned in Section 12.2.7(a).

“**Distribution**” means all stock dividends, limited partnership unit dividends, special cash dividends and distributions (whether by return of capital, paid out of surplus or otherwise), liquidating dividends or Capital Stock resulting from (or in connection with the exercise of) stock splits, reclassifications, warrants, options, non-cash dividends, mergers and consolidations and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any Capital Stock or other securities of any person, but shall not include Dividends.

“**Dividends**” means cash dividends and cash distributions (including returns of stated capital in respect of shares of Capital Stock) with respect to any shares of Capital Stock or other securities or limited partnership units made in the ordinary course of business and which is not a liquidating dividend.

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

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

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

“**EBITDA**” means, for any period, the Net Income of a person for such period, adjusted (without duplication) as follows:

- (a) such Net Income shall be increased by (to the extent, if any, such Net Income was reduced by) the sum of (i) the Interest Expense and Subordinated Debt Interest Expense for such period; (ii) the Income Tax Expenses for such period; (iii) the Depreciation and Amortization Expense

permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the Environment or the release of any materials into the Environment, including but not limited to those related to Hazardous Materials.

“Equivalent Amount” on any date means the amount in a specified currency which would result from the conversion of a specified amount in another currency at the Spot Rate. For the purposes of this definition, “Spot Rate” as at any date with respect to the conversion of an amount in one currency (the “original currency”) to another currency (the “other currency”) means the Bank of Canada noon rate of exchange on the immediately preceding Business Day for the purchase of such original currency with such other currency (and if neither currency is Canadian Dollars, purchasing Canadian Dollars first with such other currency and using the Canadian Dollars purchased to purchase the original currency).

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder from time to time in effect.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Borrower under Section 414 of the Code.

“Event of Default” means any default, breach, failure, event, state or condition described in Section 13.1. An Event of Default which occurs or exists at any time shall be deemed to be continuing at all times thereafter unless it is expressly waived in writing by the Required Lenders, whether or not the default, breach, failure, event, state or condition that gave rise to such Event of Default is remedied at any time after the Event of Default occurs.

“Existing Credit Agreement” is used with the defined meaning assigned in the Background to this Agreement. Where the context requires, capitalized terms defined in the Existing Credit Agreement are used herein with the respective defined meanings assigned therein.

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

for such period; (iv) amounts attributable to minority interests for such period, (v) non-recurring, extraordinary or unusual charges, (vi) non-cash expenses resulting from employee or management compensation, including the grant of stock options or Capital Stock to employees and/or under or pursuant to long term incentive plans, (vii) losses realized upon the disposal of capital property, (viii) foreign exchange translation losses, (ix) losses on the purchase or redemption of securities issued by that person or any Subsidiary and (x) asset write-downs (other than with respect to inventory);

- (b) such Net Income shall be reduced by (to the extent, if any, such Net Income was increased by) the sum of (i) non-recurring, extraordinary or unusual gains, (ii) gains realized upon the disposal of capital property, (iii) foreign exchange translation gains, (iv) gains on the purchase or redemption of securities issued by that person or any Subsidiary of it, (v) amounts attributable to minority equity investments and (vi) asset write-ups (other than with respect to inventory);
- (c) the Net Income during such period (adjusted as provided in paragraphs (a) and (b) above) attributable to any Subsidiaries acquired by that person during that period shall be included on a pro forma basis for that period (assuming such acquisition and the incurrence or assumption of any related Debt in connection therewith occurred on the first day of that period); and
- (d) the Net Income during such period (adjusted as provided in paragraphs (a) and (b) above) attributable to any Subsidiary disposed of by that person during that period shall be excluded on a pro forma basis for that period (assuming such disposition and the repayment of any related Debt in connection therewith occurred on the first day of that period).

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

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

“Environmental Law” means any and all federal, state, provincial, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees,

“Fee Letter” means the fee letter between the Borrower and TD providing for the payment of certain fees to TD in relation to arrangement and underwriting of the Credit Facilities under the Existing Credit Agreement.

“Fees” means any underwriting fees, upfront fees, ticking fees, agency fees, Stamping Fees, Standby Fee, Standby Instrument Fees and all other fees payable by the Borrower to the Finance Parties pursuant to or otherwise in respect of this Agreement, including pursuant to the Fee Letter and the Agency Fee Agreement.

“Final Judgment” means a declaration, award, order or judgment of a court of competent jurisdiction from which no appeal may be made or from which all rights of appeal have expired or been exhausted.

“Finance Agreements” is used with the defined meaning assigned in Subsection 15.15.1.

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

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

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

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

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

“Fiscal Year” means the 12 month accounting period of the Borrower which, as at the date hereof, ends on December 31 of each calendar year.

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

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

“Fund” means CML Healthcare Income Fund, existing prior to the date hereof as a trust formed pursuant to a declaration of trust dated January 12, 2004 (amended and restated as of February 19, 2004) under the laws of the Province of Ontario.

“GAAP” means generally accepted accounting principles in effect from time to time in Canada, as established or adopted by the Canadian Institute of Chartered Accountants or any successor body, including IFRS once adopted.

“Governmental Authority” means (a) the government of (i) Canada or any province or other political subdivision thereof or therein, or (ii) the United States of America or any State or other political subdivision thereof or therein, or (iii) any other jurisdiction in which the Borrower or any Subsidiary is a resident, organized or domiciled or conducts all or any part of its business, or which asserts jurisdiction over any assets of the Borrower or any Subsidiary or any jurisdiction from or through which payments under any Loan Document are made, or (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

“Guarantee” means, with respect to a person, any absolute or contingent liability of that person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon or in respect of any Debt of any other person. The amount of each Guarantee shall be deemed to be the amount of the Debt with respect to which the Guarantee relates, unless the Guarantee is limited to a determinable amount in which case the amount of the Guarantee shall be deemed to be the lesser of the amount of the Debt with respect to which the Guarantee relates and such determinable amount.

“Guarantor” means at any time, all present and future Subsidiaries and Affiliates of the Borrower, including (i) on and after the ARS Transactions Closing Date each of the ARS Entities and CML US Holdings and (ii) any other Subsidiary or Affiliate of the Borrower which has in each case executed and delivered a Guarantee of the Finance Obligations as required pursuant to this Agreement; provided that, if such Subsidiary or Affiliate ceases to be a Subsidiary or Affiliate of the Borrower and the Agent, at the direction of the Required Lenders, releases that Subsidiary or Affiliate from its Guarantee, that Subsidiary or Affiliate shall cease to be a Guarantor for the purposes of this Agreement.

“Hazardous Materials” means any and all pollutants, toxic or hazardous wastes or any other substances that might pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is or shall be restricted, prohibited or penalized by any applicable law including asbestos, urea

formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

"Holding Body Corporate" of any person that is an artificial body means another person that Controls that person.

"Hostile Take-Over Bid" means a Take-Over Bid by the Borrower or any of its Subsidiaries or in which the Borrower or any of its Subsidiaries is involved, in respect of which the board of directors (or equivalent governing body) of the target entity has recommended against acceptance of such Take-Over Bid to the target entity's Capital Stock holders or which is similarly opposed or contested.

"Immaterial Subsidiaries" mean those Subsidiaries of the Borrower, in the aggregate, (i) the EBITDA of which, as of the most recent Fiscal Quarter end, for the period of four consecutive Fiscal Quarters then ended, was less than 5% of EBITDA of the Borrower for such period, (ii) the total assets of which as of the end of such Fiscal Quarter were less than 5% of Total Assets as of such date and (iii) which have no Debt other than Debt existing at the time each such Subsidiary became a Subsidiary; provided that, all such existing Debt is secured by Liens described in and permitted by Clause (i) of the definition of "Permitted Liens".

"IFRS" means, at any given date, International Financial Reporting Standards, which include standards and interpretations adopted by the International Accounting Standards Board, applied on a consistent basis.

"Income Tax Expenses" means, for any period, the aggregate of all income tax expenses of a person for such period, determined on a consolidated basis in accordance with GAAP.

"Initial Closing Date" means February 22, 2008.

"Interest Coverage Ratio" means, as of the end of any Fiscal Quarter of the Borrower, the ratio of (i) EBITDA of the Borrower for the Test Period then ended to (ii) the amount of Interest Expense of the Borrower for the Test Period then ended.

"Interest Expense" means, for any period, the aggregate amount of interest expense of a person determined in accordance with GAAP and for greater certainty shall also include capitalized interest, if applicable, and interest allocated to discontinued operations of the Borrower for such period, including all interest, fees and other compensation paid or payable by the Borrower on a consolidated basis during such period to any person that has lent money or extended credit to the Borrower on a consolidated basis. Interest Expense shall also include the imputed interest component of Capital Leases. Interest Expense shall not include Subordinated Debt Interest Expense.

“Interest Payment Date” means:

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

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

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

“Lender” means a Revolver Lender, the Swing Line Lender or a Term Lender, as the context requires.

“Lenders’ Counsel” means (i) in the Province of Ontario, the firm of Fasken Martineau DuMoulin LLP, (ii) in each other relevant jurisdiction, such local legal counsel as the Agent may designate as the Lenders’ legal counsel in that jurisdiction and (iii) in each case, such replacement or additional firm as the Agent may designate from time to time as the Lenders’ legal counsel. Lenders’ Counsel shall be limited at any time to no more than one firm in each relevant jurisdiction at such time.

“Lenders’ Mandatory Prepayment Share” in relation to any Mandatory Prepayment Amount at any time means the amount in Canadian Dollars determined by the Borrower and notified to the Agent as being the product of (i) such Mandatory Prepayment Amount multiplied by (ii) the fraction of (A) the Total Commitment at that time divided by (B) the sum of (1) the Total Commitment at that time plus (2) the aggregate total principal amount (expressed in Canadian Dollars, with foreign currency denominated amounts determined at their Equivalent Amount in Canadian Dollars) of all Pari Passu Debt outstanding at that time.

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

“**Level**” means a level set out in the first column of the table contained in the definition of Applicable Margin corresponding to the range within which the Leverage Ratio as of any Fiscal Quarter end falls.

“**Leverage Ratio**” means, as of the end of any Fiscal Quarter of the Borrower, the ratio of:

- (a) Total Debt (as of the end of that Fiscal Quarter) of the Borrower; to
- (b) the aggregate of EBITDA of the Borrower for the Test Period then ended.

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

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

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

grant any of the foregoing rights or interests described in Clauses (i) to (iv) of this definition.

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

“**Loan Documents**” at any time means, collectively, this Agreement, the Confirmation, the Fee Letter, the Agency Fee Agreement, the Post-Closing Undertaking and each Guarantee executed by any Subsidiary or Affiliate of the Borrower and other document delivered to or for the benefit of the Finance Parties pursuant to or otherwise in connection with any of the foregoing agreements at or before such time.

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

“**Loan Transfer Agreement**” is used with the defined meaning assigned in Subsection 15.10.4.

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

“**Majority Lenders**” at any time means a Lender whose Commitments or Lenders whose Commitments collectively amount to at least 66-2/3% of the Total Commitment.

“**Mandatory Prepayment Amount**” means the aggregate principal amount the Borrower is obliged to prepay on account of the Loan Obligations and Pari Passu Debt by reason of any of the events contemplated by Section 9.4.

“**Material**” means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Borrower and its Subsidiaries taken as a whole.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Borrower and its Subsidiaries taken as a whole, or (b) the ability of the Borrower to perform its obligations under this Agreement or the ability of the Obligors to perform their respective obligations under the Loan Documents, or (c) the validity or enforceability of any Loan Document.

“Merger Agreement” means the agreement and plan of merger among CML Healthcare Inc., CML US Holdings, Raven Merger Corporation, ARS Holding, Inc. and Raven Stockholder Representative LLC, as Stockholder Representative dated as of December 20, 2007, as the same may be changed with the consent of the Required Lenders.

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

“Multiemployer Plan” means any Plan that is a “multiemployer plan” (as such term is defined in Section 4001(a)(3) of ERISA).

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

“Net Income” means, for any period, the net income (loss) of a person and its consolidated Subsidiaries determined for such period on a consolidated basis in accordance with GAAP.

“Net Proceeds Amount” means, with respect to any Transfer of any property by the Borrower or any of its Subsidiaries, an amount equal to the difference of:

- (a) the aggregate amount of consideration (valued at the fair market value thereof by the Borrower or such Subsidiary in good faith) received by the Borrower or such Subsidiary in respect of such Transfer minus
- (b) all ordinary and reasonable out of pocket costs, expenses and fees actually incurred by the Borrower or such Subsidiary in connection with such Transfer.

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

“Non-Acceptance Lender” is used with the defined meaning assigned in Section 5.10.

“Non U.S. Plan” means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by an Obligor or any Subsidiary primarily for the benefit of employees of such Obligor or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides for retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment to such employees, and (b) is not subject to ERISA or the Code.

“**Non-Withheld Part XIII Tax**” is used with the defined meaning assigned in Subsection 8.9.2.

“**Obligors**” at any time means the Borrower and each Guarantor as at such time.

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

“**Pari Passu Debt**” means Debt issued by the Borrower (i) with a term to maturity expiring after the Revolver Maturity Date, (ii) having an average loan life greater than the remaining average loan life of the Credit Facilities and (iii) unsecured and ranking on a *pari passu* basis with the Finance Obligations.

“**Part XIII Tax**” means taxes imposed under Part XIII of the *Income Tax Act* (Canada).

“**Participant**” is used with the defined meaning assigned in Subsection 15.10.3.

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

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

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

“**Permitted Acquisition**” means an Acquisition which satisfies the following criteria, namely (i) the Acquisition is not part of a Hostile Take-Over Bid, (ii) the Acquisition has been approved by the board of directors of the Borrower (if such approval is required), (iii) the person or assets comprised in such Acquisition are located in, and the business associated therewith is conducted in, Canada, the continental United States and/or the United Kingdom, (iv) the business associated with the person or assets comprised in such Acquisition is a Core Business, (v) no additional Debt of the Borrower on a consolidated basis will result following the completion of such Acquisition, other than Debt permitted by Subsection 12.2.8, (vi) no additional Liens on the assets of the Borrower (on a consolidated basis) will result from the completion of such Acquisition, other than Liens permitted by

Subsection 12.2.3, (vii) upon completion of such Acquisition, the Borrower will be in compliance with Section 12.3, (viii) the Borrower on a consolidated basis will not incur any Material Environmental liabilities as a result of such Acquisition and (ix) all governmental Authorizations, and nongovernmental Authorizations, required in connection with such Acquisition have been obtained and all statutory waiting periods have lapsed or been waived with the consent of the Required Lenders.

“Permitted Liens” means:

- (a) Liens for Taxes, charges, rates and assessments not yet due or, if due, the validity of which is being contested in good faith and Liens for the excess of the amount of any past due Taxes for which a final assessment has not been received over the amount of such Taxes as estimated and paid by such person;
- (b) undetermined or inchoate Liens and charges incidental to current construction or current operations which have not at the time been duly filed or registered in accordance with applicable law against such person or their respective property, or if filed or registered, which relate to obligations neither due nor delinquent;
- (c) restrictions, easements, servitudes, party wall agreements, rights of way, rights in the nature of easements and other similar rights or agreements, so long as the use of the property subject thereto is not materially or adversely affected thereby;
- (d) the Lien of any judgment rendered or claim filed against such person which it shall be contesting in good faith and in respect of which there shall have been deposited with an arm’s length person acceptable to the Agent cash, security or a surety bond satisfactory to such arm’s length person in an amount sufficient to pay such judgment or claim;
- (e) defects or irregularities of title which do not in the aggregate materially impair the value of the property to which they relate or interfere with the use of the property to which they relate for the purposes for which it is held by such person;
- (f) pledges or deposits to secure payment of workers’ compensation, good faith deposits in connection with tenders, contracts (other than contracts for the repayment of Debt) or leases, deposits to secure public or statutory obligations, deposits to secure or in lieu of surety or appeal bonds, and pledges or deposits for similar purposes in the ordinary course of business;
- (g) all reservations in the original grant from the Crown of any lands or interest therein and statutory exceptions to title;

- (h) zoning laws and ordinances and municipal by laws and regulations which do not materially interfere with the use by such person of the property affected thereby for the purpose for which such property is held by such person;
- (i) Purchase Money Liens securing Purchase Money Obligations and obligations in respect of Capital Leases (whereunder the Borrower or any of its Subsidiaries is the lessee); provided that, the aggregate amount of all Debt of the Borrower and its Subsidiaries on a consolidated basis secured by such Purchase Money Liens and Capital Leases (including all Debt of any Subsidiaries in respect of Purchase Money Obligations and Capital Leases outstanding at the time such Subsidiary initially was acquired or otherwise became a Subsidiary) shall not exceed CAD40,000,000 (or the Equivalent Amount in foreign currency) at any time;
- (j) other Liens, charges and encumbrances incidental to the conduct of the business of such person or the ownership of their respective property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of such business;
- (k) Liens existing on any asset at the time of acquisition thereof by such person and not created in connection with such acquisition; and
- (l) those Liens described in Schedule 8 hereto.

“Plan” means an “employee benefit plan” (as defined in section 3(3) of ERISA) as to which the Borrower or any ERISA Affiliate has any liability, contingent or otherwise.

“Property Reinvestment Application” means, with respect to any Asset Disposition, the application of an amount equal to the Net Proceeds Amount (or a portion thereof) with respect to such Transfer to the acquisition by the Borrower or any of its Subsidiaries of operating assets of the Borrower or any of its Subsidiaries to be used in the business of the Borrower or that Subsidiary (in which event the Property Reinvestment Application shall be limited to the fair market value of such operating assets).

“Purchase Money Obligation” means any Debt representing any unpaid part of, or incurred (by way of creation, issue, guarantee, assumption or otherwise) to provide any part of, the consideration for the acquisition of any asset (including Capital Stock or other securities issued by a person) or the cost of constructing or improving any asset, and includes any extension or renewal of the term or refunding of such indebtedness.

“Quotation Date” means, (i) in relation to any Interest Period, the day on which quotations would ordinarily be given by prime banks in the London interbank

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

"Rateable Share" of any Lender at any time means:

- (a) in relation to any outstanding Advance, or any interest or Fees payable in relation thereto, the proportion borne by such Lender's share of the Advance to the full amount of such Advance;
- (b) in relation to the Revolver Facility, or any Fees payable in relation thereto, the proportion borne by such Lender's Revolver Commitment to the Total Revolver Commitment;
- (c) in relation to the CAD Term Facility, or any Fees payable in relation thereto, the proportion borne by such Lender's CAD Term Commitment to the Total CAD Term Commitment;
- (d) in relation to the USD Term Facility, or any Fees payable in relation thereto, the proportion borne by such Lender's USD Term Commitment to the Total USD Term Commitment; and
- (e) in relation to Sections 14.11, 14.21 and 14.25 or any other matter not referred to in paragraphs (a), (b), (c) or (d) of this definition, the proportion borne by (i) the sum of (A) the sum of all such Lender's Commitments under the CAD Term Facility, the Revolver Facility and the Swing Line plus (B) the Equivalent Amount in Canadian Dollars of such Lender's Commitment under the USD Term Facility to (ii) the Total Commitment,

in the case of paragraph (b), (c), (d) or (e), determined (i) at such time unless an Enforcement Event has occurred or (ii) immediately before an Enforcement Event has occurred if one has occurred.

"Reference Lender" means TD acting in its capacity as reference lender in relation to the Credit Facilities, or (as the context requires) any replacement for such reference lender appointed pursuant to Subsection 14.14.2.

"Relevant Facility" means the CAD Term Facility, Revolver Facility, Swing Line or USD Term Facility, as the context requires.

“Relevant Lenders” means, in relation to any Borrowing, the Lender or Lenders that made, are deemed to have made or are to make (as the context requires) that Borrowing available under this Agreement.

“Relevant Maturity Date” means the Revolver Maturity Date, Swing Line Maturity Date or Term Maturity Date, as the context requires.

“Relevant Syndicated Facility” means the CAD Term Facility, Revolver Facility or USD Term Facility, as the context requires.

“Relevant Total Commitment” means the Swing Line Commitment, Total CAD Term Commitment, Total Revolver Commitment or Total USD Term Commitment, as the context requires.

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

“Required Lenders” means the Majority Lenders, except for those matters specified in Subsections 14.17.2 and 14.17.3, in which case it means those Finance Parties stipulated in those Subsections.

“Responsible Officer” means any senior financial officer or any other officer of any Obligor with responsibility for the administration of this Agreement or the Loan Documents to which such Obligor is party.

“Restricted Dividends and Distributions” means Dividends and Distributions that are not prohibited by Subsection 12.2.7(a).

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

“Revolver Facility” means the five (5) year committed revolving term credit facility established by the Revolver Lenders in favour of the Borrower under Article 2 of the Existing Credit Agreement and continued under Article 2.

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

“Revolver Maturity Date” means February 22, 2013, or if such date is not a Business Day, the preceding Business Day.

“Rollover” means (i) the continuation on the Period End Date of an outstanding Libor Loan (or a portion thereof) for another Interest Period or (ii) a new issue of Acceptances issued on the Period End Date of an outstanding issue of

Acceptances in an aggregate face amount equal to the Credit Amount of such outstanding issue of Acceptances (or a portion thereof).

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

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

“Senior Debt” means, as of the date of determination thereof, all Debt of the Borrower and its Subsidiaries (other than the Debt owing to any Obligor) which is not expressed to rank junior or subordinate to any other Debt of the Borrower or any Subsidiary.

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

“Standby Fee” means the standby fee payable under Subsection 8.4.1 or 8.4.2.

“Standby Instrument” means a documentary or trade letter of credit, a bank guarantee or a standby issued by a Lender pursuant to this Agreement.

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

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

“Subordinated Debt” means any Debt of the Borrower or any of its Subsidiaries which is unsecured, subordinated and postponed to the prior Payment in Full of the Finance Obligations in a manner satisfactory in form and substance to the Required Lenders.

“Subordinated Debt Interest Expense” means, for any period, the aggregate amount of interest expense in respect of Subordinated Debt for such period, determined in accordance with GAAP.

“Subsidiary” means, with respect to any person, any legal or commercial entity of which more than 50% of its outstanding Voting Capital Stock are, at such time, directly or indirectly owned by such person, by such person and one or more other Subsidiaries of such person, or by one or more other Subsidiaries of such person and shall include each of those legal or commercial entities listed in Schedule 5 and which Subsidiaries have been identified as either a Guarantor or an Immaterial Subsidiary of such person in Schedule 5.

“Swing Line” means the five (5) year revolving term credit facility established by the Swing Line Lender in favour of the Borrower under Article 3 of the Existing Credit Agreement and continued under Article 3.

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

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

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

“Swing Line Maturity Date” means the earlier of (i) the date the Swing Line is cancelled pursuant to Subsection 3.4.1 and (ii) the Revolver Maturity Date.

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

“Tax” or “Taxes” means all taxes of any kind or nature whatsoever, including income taxes, capital taxes, levies, imposts, transfer taxes, stamp taxes, documentary taxes, royalties, duties, charges to taxes, value added taxes, goods and services taxes, sales taxes, business transfer taxes, excise taxes, property taxes, and all fees, deductions, compulsory loans, withholdings and restrictions or conditions resulting in a charge, imposed, levied, collected, withheld or assessed by any authority of or within any jurisdiction whatsoever having power to tax, together with penalties, fines, additions to tax and interest thereon.

“TD” means The Toronto-Dominion Bank.

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

“Term Commitment” of any Term Lender means the CAD Term Commitment or USD Term Commitment of that Lender, as the context requires.

“Term Facility” means the five (5) year committed non-revolving term loan facility established by the Term Lenders in favour of the Borrower under Article 5 of the Existing Credit Agreement and continued under Article 4.

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

“Term Maturity Date” means February 22, 2013 or, if such date is not a Business Day, the preceding Business Day.

“Test Period” means any period of four consecutive Fiscal Quarters.

“Total Assets” shall mean, at any time the same is to be determined, the aggregate of all assets which would be listed on a balance sheet of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

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

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

“Total Debt” at any time means the amount equal to the total sum (without duplication) of all Debt of the Borrower and its Subsidiaries at that time determined on a consolidated basis in accordance with GAAP, but excluding Subordinated Debt.

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

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

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

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

“Transfer” means, with respect to any person, any transaction in which such person sells, conveys, transfers or leases (as lessor) any of its assets, including Capital Stock.

“Transferee” is used with the defined meaning assigned to it in Subsection 15.10.4.

“Treasury Agreement” means a Derivative which is entered into by the Borrower or any of its Subsidiaries with a Finance Party to pay or hedge the actual or anticipated foreign currency and/or interest rate obligations or anticipated receipts of the Borrower or any of its Subsidiaries.

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

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

“2011 Note Debt” means the CAD190,000,000 aggregate principal amount of 5.754% Secured Guaranteed Notes due August 6, 2011 issued on or about August 6, 2004 pursuant to the Note Purchase Agreement dated August 6, 2004 among the Borrower, certain guarantors and the noteholders party thereto, together with any accrued and unpaid interest thereon and the make-whole amount payable in relation thereto.

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

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

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

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

“USD Term Facility” means the portion of the Term Facility in relation to which the commitments of the Term Lenders are expressed in US Dollars.

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

“USA Patriot Act” means United States Public Law 107 56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

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

“Wholly-Owned Subsidiary” means, at any time, any Subsidiary one hundred percent (100%) of all of the equity interests (except directors’ qualifying shares) and voting interests of which are directly or indirectly owned by any one or more of the Borrower and the Borrower’s other Wholly-Owned Subsidiaries at such time.

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

1.2 **Extended Meanings**

To the extent the context so admits, in this Agreement the following words and expressions shall be given the following corresponding extended meanings:

“agreement” - any agreement, oral or written, any simple contract, deed or specialty, and includes any bond, bill of exchange, indenture, instrument or undertaking.

“asset” - any undertaking, business, property (real, personal or mixed, tangible or intangible) or other asset.

“change” - change, modify, alter, amend, supplement, extend, renew, compromise, novate, replace, terminate, release, discharge, cancel, suspend or waive.

“claim” - claim, claim over, counter-claim, cross-claim, defence, demand or liability (actual or contingent, now existing or arising hereafter), whether arising by agreement or statute, at law or in equity or otherwise, or any proceeding, judgment or order of any court or other Governmental Authority or arbitrator.

a **“document”** - a written agreement, consent, waiver, certificate, notice or other written document or instrument.

“include” – include without limitation and such term shall not be construed to limit any word or statement which it follows to the specific items or matters immediately following it or similar terms or matters.

“knowledge” of any person - to the best of that person’s knowledge, information and belief after reasonable enquiry.

“losses and expenses” - losses, costs, expenses, damages, penalties, awards, Orders, claims, claims over, demands and liabilities, including any applicable court costs and legal fees and disbursements on a solicitor and client basis.

“obligations” - indebtedness, obligations, promises, covenants, responsibilities, duties and liabilities (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

a **“person”** - an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a body corporate organized under the laws of any jurisdiction, a government or agency of a government or any other legal or commercial entity.

“proceeding” - any proceeding, legal action, lawsuit, arbitration, mediation, alternative dispute resolution proceeding or other proceeding.

“rate of exchange” – the rate of exchange, including any premiums or costs payable in connection with any currency conversion being effected.

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

“register” - register, file or record with an applicable Governmental Authority.

a **“representative”** - any person empowered to act for another, including an agent, an officer of a body corporate or association and a trustee, executor or administrator of an estate.

“rights” - rights, titles, benefits, interests, powers, authorities, discretions, privileges, immunities and remedies (actual or contingent, direct or indirect, matured or unmatured, now existing or arising hereafter), whether arising by agreement or statute, at law, in equity or otherwise.

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

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

“written” and **“in writing”** - an original writing, a pdf or facsimile copy of a writing or an e-mail.

1.3 **References to Agreements**

Unless the context otherwise requires, each reference in this Agreement to any agreement or document (including this Agreement and any other defined term that is an agreement or document) shall be construed so as to include such agreement or document (including any attached schedules, appendices and exhibits) and each change made to it at or before the time in question; provided that, (a) no change to this Agreement shall be effective unless it is made in compliance with Section 15.19 and (b) any change to any agreement or document which is not made in compliance with the Loan Documents shall be disregarded for the purposes of determining whether or not the Obligor party thereto is in compliance with its obligations relative thereto under the Loan Documents (save for any obligations not to change such agreement or document contained in any Loan Document).

1.4 **Reference to Statutes**

Unless the context otherwise requires, each reference in this Agreement to any code, statute, regulation, official interpretation, directive or other legislative enactment of any Canadian or foreign jurisdiction (including any political subdivision of any thereof) at any time

shall be construed so as to include such code, statute, regulation, official interpretation, directive or enactment and each change thereto made at or before that time.

1.5 Headings, etc.

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

1.6 Grammatical Variations

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

1.7 Accounting Principles

Wherever in this Agreement reference is made to generally accepted accounting principles, such reference means GAAP. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purposes of this Agreement or any other Loan Document, including the contents of any Certificate to be delivered hereunder, such determination, consolidation or computation shall, unless the parties otherwise agree or the context otherwise requires, be made in accordance with such generally accepted accounting principles applied on a consistent basis. If there is any change from the accounting policies, practices and calculation methods used by the Borrower in preparing the audited financial statements of the Fund for its fiscal year ending December 31, 2009, or components thereof, including as a result of the adoption of IFRS or of any other amendments to GAAP (collectively, a "**GAAP Change**") and such GAAP Change results in a change in the calculation for the financial covenants, standards, or terms used in this Agreement or any other Loan Document, then the Borrower and the Majority Lenders shall use commercially reasonable efforts to negotiate in good faith amendments to the provisions of this Agreement that are affected by the implementation of any GAAP Change with the intent of having the respective positions of the Obligors and the Lenders after such coming into force of such GAAP Change conform as nearly as possible to their respective positions under this Agreement immediately prior to the restatement date; provided, however, that until any such amendments shall have been agreed upon, the terms, conditions and undertakings of this Agreement shall be interpreted and applied as if no such GAAP Change had occurred ("**Frozen GAAP**"). In such case, the Borrower shall provide the Lenders a management prepared reconciliation between the financial results of the

Obligors (i) under the then existing Frozen GAAP and (ii) under the GAAP Change, for purposes of determining compliance with the terms and conditions of this Agreement.

1.8 References to Time

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

1.9 Rounding

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

ARTICLE 2 THE REVOLVER FACILITY

2.1 Establishment of Revolver Facility

Upon and subject to the terms and conditions of this Agreement, the Revolver Lenders hereby agree to continue the committed revolving term credit facility which was established under Section 2.1 of the Existing Credit Agreement in favour of the Borrower for general corporate purposes, including to (a) finance Permitted Acquisitions and (b) fund Distributions that are not prohibited by Subsection 12.2.7(a) in an aggregate total amount not to exceed CAD10,000,000. Each Revolver Lender severally (and not jointly) agrees, subject to Article 10, to make and continue to make its share available in each Borrowing to be made under the Revolver Facility in accordance with its Rateable Share of the Revolver Facility. Advances under the Revolver Facility established under the Existing Credit Agreement outstanding immediately before the date hereof shall continue to be outstanding under the Revolver Facility on the date hereof in the same form.

2.2 Facility Limit

2.2.1 General. On each Borrowing Date under the Revolver Facility, the Borrower shall ensure that the total Credit Amount of all Advances outstanding under the Revolver Facility does not exceed the Total Revolver Commitment.

2.2.2 Facility Limit. The initial Total Revolver Commitment is CAD90,000,000. Subject to Section 9.6, except for temporary excesses arising from foreign exchange fluctuations, the Borrower shall ensure that the aggregate Credit Amount of all Advances outstanding under the Revolver Facility shall not, at any time, exceed the Total Revolver Commitment at any time.

2.2.3 Reductions and Cancellation. The Total Revolver Commitment shall be permanently cancelled and reduced by the amount of each reduction in the Total Revolver Commitment made pursuant to Section 9.3, 9.4 or 9.7 and accordingly (except for a reduction pursuant to Section 9.7) the Revolver Commitment of each Revolver Lender shall be permanently cancelled and reduced by the proportion of such reduction which such Revolver Lender's Revolver Commitment bears to the Total Revolver Commitment. Each Affected Lender's Revolver Commitment shall be permanently cancelled and reduced to the extent

required pursuant to Section 9.7. The Total Revolver Commitment shall be cancelled on the Revolver Maturity Date.

2.3 Availability

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

2.4 Drawdown Requests

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

- (a) for a Floating Rate Loan, before 10:00 a.m. on the Business Day before the proposed Drawdown Date specifying the principal amount (which must be at least \$500,000) and the proposed Drawdown Date (which must be a Business Day falling within the Availability Period for the Revolver Facility);
- (b) for a Libor Loan, before 10:00 a.m. on the Business Day before the Quotation Date for the Interest Period commencing on the proposed Drawdown Date specifying the principal amount (which must be USD1,000,000, or a whole number multiple of USD100,000 in excess thereof) and the proposed Interest Period (which must commence within the Availability Period for the Revolver Facility and end on or before the Revolver Maturity Date);
- (c) for an issue of Acceptances, specifying the proposed Drawdown Date (which must be a Business Day falling within the Availability Period for the Revolver Facility) and otherwise as required in accordance with Article 4; and
- (d) for the issuance of a Standby Instrument, as required in accordance with Article 7.

2.5 Proceeds of Drawdown

The proceeds of each Drawdown by way of Loan under the Revolver Facility when received by the Agent, shall, subject to Section 9.9 and Article 10, be advanced by the Agent to the Borrower pursuant to Subsection 14.19.1 by bank transfer to the credit of the Borrower's Accounts. The proceeds from the sale of Acceptances will be dealt with in accordance with Article 5 and Article 6.

ARTICLE 3 THE SWING LINE

3.1 Establishment of the Swing Line

3.1.1 The Swing Line Lender hereby agrees to continue the revolving term credit facility which was established under Section 3.1 of the Existing Credit Agreement in favour of

the Borrower and, subject to Article 10, agrees to make and continue to make Loans thereunder to the Borrower to finance cash management products and short term liquidity needs of the Borrower and its Subsidiaries. Advances under the Swing Line established under the Existing Credit Agreement outstanding immediately before the date hereof shall continue to be outstanding under the Swing Line on the date hereof in the same form.

3.1.2 The Swing Line Lender agrees, subject to Article 10, to issue Standby Instruments from time to time under this revolving term credit facility in accordance with the provisions of Article 7.

3.2 Swing Line Commitment

3.2.1 *General.* The Borrower shall ensure that the aggregate Credit Amount of all Advances outstanding under the Swing Line does not exceed the Swing Line Commitment at any time.

3.2.2 *Initial Swing Line Commitment.* The initial Swing Line Commitment is CAD10,000,000.

3.2.3 *Reductions.* The Swing Line shall be permanently cancelled and reduced by the amount of each reduction in the Swing Line Commitment pursuant to Section 9.3, 9.4 or 9.7. The Swing Line shall be cancelled on the Swing Line Maturity Date.

3.2.4 *Drawdown Requests.* If the Borrower does not maintain current accounts with the Swing Line Lender, to obtain a Drawdown under the Swing Line the Borrower must request the Swing Line Lender for that Drawdown before 11:00 a.m. (Toronto time) on the proposed Drawdown Date specifying the principal amount and proposed Drawdown Date (which must be a Business Day falling within the Availability Period for the Swing Line). The Borrower authorizes the Swing Line Lender to make each Drawdown and transfer funds based on notice by telephone made by any individual that the Swing Line Lender in good faith believes to be acting on behalf of the Borrower, it being understood that the foregoing authorization is specifically intended to allow the Borrower to request a Drawdown under the Swing Line by telephone. The Borrower agrees to deliver promptly to the Swing Line Lender a written confirmation of each Drawdown or other funds transfer request signed by a Responsible Officer. If the written confirmation differs in any material respect from the action taken by the Swing Line Lender, the records of the Swing Line Lender shall govern absent manifest error. Subject to Article 10, the Swing Line Lender shall advance each Drawdown to the Borrower pursuant to this Subsection 3.2.4 by bank transfer to the credit of the Borrower's Accounts.

3.3 Overdraft Basis

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

3.4 Adjustments on Termination of the Swing Line

3.4.1 *Adjustments and Assignments.* The Swing Line Lender may at any time, whether or not a Default has occurred and is continuing, cancel the Swing Line by notice to the Agent and the Borrower. If the Agent cancels the Revolver Facility in whole or in part pursuant to Section 13.2, the Agent shall, unless the Swing Line Lender agrees otherwise, also cancel the Swing Line Commitment in its entirety. If the Swing Line is cancelled:

- (a) the Swing Line Commitment shall reduce to nil;
- (b) the Swing Line Lender shall (if not already a Revolver Lender) become a Revolver Lender with a Commitment thereunder equal to the amount (or if already a Revolver Lender, its Commitment in respect of the Revolver Facility shall be increased by the amount) of the Swing Line Commitment in effect before it was reduced to nil pursuant to Clause (a) above;
- (c) the Agent will determine the amount of adjusting payments that may need to be made amongst the Revolver Lenders (including the Swing Line Lender) to ensure that their respective shares in outstanding Advances under the Revolver Facility (which shall be deemed to include any outstanding Standby Instruments under the Swing Line) equal their respective Rateable Shares of the Revolver Facility;
- (d) each of the Revolver Lenders (including, if applicable, the Swing Line Lender) shall advance to the Agent the amount of any adjusting payment required of it determined pursuant to Clause (c) above;
- (e) the Agent shall, upon receipt from the Revolver Lenders (including the Swing Line Lender) advance to each applicable Revolver Lender (including, if applicable, the Swing Line Lender) the amount of any adjusting payment required to be paid to such Revolver Lender as determined pursuant to Clause (c) above; and
- (f) the Borrower shall be obliged to repay outstanding Advances under the Revolver Facility in accordance with the provisions of this Agreement in the Rateable Shares amongst the Revolver Lenders as adjusted pursuant to this Subsection 3.4.1.

ARTICLE 4 THE TERM FACILITY

4.1 Establishment of Term Facility

Upon and subject to the terms and conditions of this Agreement, the Term Lenders hereby agree to continue the committed non-revolving term loan facility which was established under Section 5.1 of the Existing Credit Agreement in favour of the Borrower to fund (a) a portion of the consideration required to be paid by the Borrower to complete the ARS Transactions and certain fees and expenses relating thereto and (b) the repayment of the 2011 Note Debt and certain fees and expenses related thereto. Each CAD Term Lender severally (and

not jointly) agrees to continue to make its share available in each Borrowing made under the CAD Term Facility in accordance with its Rateable Share of the CAD Term Facility. Each USD Term Lender severally (and not jointly) agrees to continue to make its share available in each Borrowing to be made under the USD Term Facility in accordance with its Rateable Share of the USD Term Facility. Advances under the Term Facility established under the Existing Credit Agreement outstanding immediately before the date hereof shall continue to be outstanding under the Term Facility on the date hereof in the same form.

4.2 Facility Limit

4.2.1 *General.* On each Borrowing Date under the Term Facility, the Borrower shall ensure that (a) the Credit Amount of all Advances outstanding under the CAD Term Facility does not exceed the Total CAD Term Commitment and (b) the total amount of all Advances outstanding under the USD Term Facility does not exceed the Total USD Term Commitment.

4.2.2 *Facility Limit.* The Total CAD Term Commitment which was initially established under the Existing Credit Agreement was CAD207,800,000 and it remains as such as at the date hereof. The Total USD Term Commitment which was initially established under the Existing Credit Agreement was USD66,622,080 and it remains as such as at the date hereof. Subject to Section 9.6, except for temporary excesses arising from foreign exchange fluctuations, the Borrower shall ensure that the aggregate Credit Amount of all Advances outstanding under the CAD Term Facility shall not, at any time, exceed the Total CAD Term Commitment at any time. The Borrower shall also ensure that the aggregate amount of all Advances outstanding under the USD Term Facility shall not, at any time, exceed the Total USD Term Commitment.

4.2.3 *Reductions and Cancellation.* Each of the Total CAD Term Commitment and Total USD Term Commitment shall be permanently cancelled and reduced by the amount of each reduction in the Total CAD Term Commitment and Total USD Term Commitment respectively made pursuant to Sections 9.2, 9.3, 9.4 and 9.7 and accordingly (except for a reduction pursuant to Section 9.7) the CAD Term Commitment and USD Term Commitment of each Term Lender shall be respectively permanently cancelled and reduced by the proportion of such reduction which such Lender's CAD Term Commitment bears to the Total CAD Term Commitment and such Lender's USD Term Commitment bears to the Total USD Term Commitment. Each Affected Lender's Term Commitment shall be permanently cancelled and reduced to the extent required pursuant to Section 9.7. The Total Term Commitment shall be cancelled on the Term Maturity Date.

4.3 Availability

Upon and subject to the terms and conditions of the Existing Credit Agreement, the Borrower borrowed, on a non-revolving basis, (a) two sets of Advances under the CAD Term Facility by way of Loans and/or Acceptances, one set on the Initial Closing Date for the purposes specified in Clause (b) of Section 4.1 and the other set on the ARS Transactions Closing Date for the purposes specified in Clause (a) of Section 4.1, and (b) one set of Advances under the USD Term Facility by way of Libor Loans and/or US Base Rate Loans on the ARS Transactions Closing Date for the purposes specified in Clause (a) of Section 4.1. All such Advances remain outstanding on the date hereof and the Borrower agrees to repay such Advances upon and subject to the terms and conditions of this Agreement.

ARTICLE 5
BANKERS' ACCEPTANCES UNDER THE REVOLVER FACILITY AND THE CAD
TERM FACILITY

5.1 Notice and Tenor

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

5.2 Face Amount of Drafts

The aggregate face amount of an issue of Drafts to be accepted on any particular Borrowing Date must be CAD1,000,000 or a whole number multiple of CAD100,000 in excess thereof. The face amount of each Draft must be a whole number multiple of CAD100,000.

5.3 Power of Attorney

In order to facilitate issues of Acceptances pursuant to this Agreement, the Borrower authorizes each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility), and for this purpose appoints each such Relevant Lender its lawful attorney with full right of substitution and delegation, to complete, sign and endorse Drafts issued in accordance with a Borrowing Request delivered to the Agent pursuant to Section 5.1 on its behalf in handwritten or by facsimile or mechanical signature or otherwise and, once so completed, signed and endorsed, and following acceptance of them as Acceptances under this Agreement, then discount, negotiate or deliver such Acceptances in accordance with the provisions of this Article 4. Drafts so completed, signed, endorsed, negotiated or delivered on behalf of the Borrower by any such Relevant Lender shall bind the Borrower as fully and effectively as if so performed by an authorized officer of the Borrower.

5.4 Restrictions

5.4.1 *General.* The Agent shall have the discretion to restrict the term and maturity date of an issue of Acceptances. Unless the Agent notifies the Borrower to the contrary, the maximum number of issuances of Acceptances outstanding at any time is limited to eight (8).

5.4.2 *Marketability.* The obligations of the Relevant Lenders under each Relevant Syndicated Facility (other than the USD Term Facility) to accept and discount any requested issue of Acceptances pursuant to this Agreement are also subject to the Agent's determination that no BA Disruption Event (as defined in Subsection 8.7.2) has occurred.

5.5 Discount and Sale of Acceptances

5.5.1 *Purchase at Discount.* Subject to Sections 5.10 and 5.11, each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) shall accept Drafts

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

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

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

5.5.2 *Payment and Advance of Net Acceptance Proceeds.* Except as provided in Section 6.3 and Subsection 14.19.7 and subject to Article 10, each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) shall remit the Net Acceptance Proceeds of its Rateable Share of each issue of Acceptances to the Agent on the Borrowing Date of that issue of Acceptances under such Relevant Syndicated Facility, respectively, in exchange for delivery of such Acceptances. Such Net Acceptance Proceeds, when received by the Agent, shall, subject to Section 9.9 and Article 10, be advanced by the Agent pursuant to Subsection 14.19.1 by bank transfer to the credit of the Borrower's Accounts.

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

5.6 Stamping Fee

The Borrower shall pay to the Agent for the account of each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) a stamping fee on the issuance of each Acceptance by such Relevant Lender for the account of the Borrower which shall be in an amount equal to the product of (a) the face amount of such Acceptance multiplied by (b) the actual number of days to elapse in the Tenor of such Acceptance multiplied by (c) the fraction of (i) the Applicable Margin divided by (ii) 365. The stamping fee is reflected in the computation of Net Acceptance Proceeds set out in Subsection 5.5.1 and each such Relevant Lender is authorized by the Borrower to deduct the Stamping Fee from the Acceptance Proceeds of the Acceptances accepted by it.

5.7 Payment of Acceptances

Unless made subject to a Conversion or a Rollover, the Borrower shall pay to the Agent for the account of each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) the full face amount of each Acceptance accepted by that Relevant Lender for the account of the Borrower on the Period End Date of such Acceptance. If an issue of Acceptances matures and the Borrower has not made such payment or provided for its Conversion or Rollover, such Acceptance shall be deemed to be converted on its Period End Date into a Canadian Prime Rate Loan made available by the Relevant Lenders that accepted those Acceptances in an aggregate principal amount equal to their full aggregate face amount.

5.8 Waivers

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

5.9 Notice of Maturing Acceptances

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

5.10 BA Equivalent Advances

If a Relevant Lender under a Relevant Syndicated Facility (other than the USD Term Facility) does not customarily accept Drafts for the purpose of subsequent sale as a bankers' acceptance (a "**Non-Acceptance Lender**"), each time the Borrower gives a Borrowing Request for an issue of Acceptances, such Non-Acceptance Lender shall, in lieu of accepting and purchasing Acceptances pursuant to Section 5.5, either purchase Discount Notes pursuant to Section 5.11 or make a loan advance in Canadian Dollars to the Borrower (a "**BA Equivalent Advance**") in the amount equal to the Net Acceptance Proceeds which would be derived from a hypothetical sale of Drafts accepted by that Non-Acceptance Lender ("**Notional Acceptances**") in the aggregate face amount equal to its Rateable Share of such requested issue of Acceptances at a discount rate that yields to that Non-Acceptance Lender (excluding the Stamping Fee) an interest rate per annum equal to that Non-Acceptance Lender's BA Reference Rate for the applicable Tenor of such Notional Acceptances. Any BA Equivalent Advance shall be repayable on the Period End Date of such issue of Acceptances. A Non-Acceptance Lender shall be entitled to deduct from the amount of its BA Equivalent Advance to be remitted to the Agent pursuant to Subsection 5.5.2 an amount equal to the Stamping Fee determined in accordance with Section 5.6 that would have been payable to it had it accepted the Notional Acceptances corresponding to the BA Equivalent Advance.

5.11 Discount Notes

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

5.12 References to Acceptances

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

5.13 Clearing House System

The Borrower agrees that each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) may require that Drafts accepted by it be made payable to a clearing house (such as CDS & Co.) and that the resulting Acceptances (including the delivery thereof) may be subject to the rules, regulations, policies and other guidelines established from time to time by the applicable clearing house and that such Relevant Lender will be required to comply with the same at all times. The Borrower hereby consents to the deposit (by or on behalf of such Relevant Lender) of any Acceptance in the book-based system maintained by a recognized clearing house, and to the sale or resale of the whole or any item or part of any interest whatsoever held by that Relevant Lender or by any third party at any time in such Acceptance. Further, the Borrower agrees to abide by, and to assist and co-operate with each Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) in observing, complying with and fulfilling (to the extent that such Relevant Lender may reasonably require the Borrower do so), any and all obligations, requirements and directions issued by or on behalf of an applicable clearing house with respect to Acceptances issued hereunder.

5.14 Deemed Acceptances

Whenever a Relevant Lender is required under any provision of this Agreement to purchase and take delivery of any Acceptances or Discount Notes (and where required hereunder that Required Lender remits its Net Acceptance Proceeds to the Agent), that Relevant Lender shall be deemed for all purposes of this Agreement to have completed and signed the Draft giving rise to such Acceptance pursuant to Section 5.3 and to have purchased and taken delivery of such Acceptance or Discount Note hereunder whether or not it actually does so.

ARTICLE 6 CONVERSIONS AND ROLLOVERS

6.1 Conversions

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

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

upon delivering a Borrowing Request to the Agent specifying both the amount and Type of the Advance to be converted and the amount and Type of the requested resulting Advance. The relevant provisions of this Agreement applicable to a Drawdown and availability of the same Type as the Advance which will result from the Conversion (as well as any portion of the Advance which is not being converted) must be satisfied to effect any such requested Conversion (including equivalent notice provisions and amounts required under Section 2.4 with Advances under the Term Facility being in minimum amounts of \$2,000,000 and multiples of \$100,000), save that (y) the Borrowing Date of the converted Advance must fall before the Relevant Maturity Date of the Relevant Syndicated Facility and (z) the Interest Period for any Libor Loan and the Tenor for any issue of Acceptances resulting from any such conversion must have a Period End Date falling on or before the Relevant Maturity Date.

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

6.1.3 *Different Currency Denomination.* If the Borrower has requested a Conversion of an Advance to a Type of Advance denominated in a different currency, the Borrower shall repay

the Advance (or relevant portion) being converted and, subject to the foregoing provisions of this Section 6.1 and receipt by the Agent of such repayment, the Relevant Lenders shall, subject to Section 10.3, make the Type of Advance requested on the Conversion to the Borrower on the Conversion Date in the same manner as a Drawdown.

6.1.4 *Acceptances.* If the Borrower has requested a Conversion into an issue of Acceptances, each Relevant Lender shall, except as otherwise provided in Sections 5.10 and 5.11 and subject to Section 10.3 and the foregoing provisions of this Section 6.1, accept Drafts and purchase and take delivery of its Rateable Share of the resulting issue of Acceptances for its own account on the Conversion Date in the manner provided for in Section 6.3.

6.2 Rollovers

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

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

6.2.3 *Limitations.* The relevant provisions of this Agreement applicable to a Drawdown and availability of the same Type of Advance as the Advance which will result from the Rollover (as well as any portion of the Advance which is not being repaid or rolled over on such Rollover Date) must be satisfied to effect any Rollover requested under this Agreement (including equivalent notice provisions and amounts required under Section 2.4 with Advances under the Term Facility being in minimum amounts of \$2,000,000 and multiples of \$100,000), save that (y) the Borrowing Date of the Advance resulting from the Rollover must fall before the Relevant Maturity Date of the Relevant Syndicated Facility and (z) the Interest Period for any Libor Loan and the Tenor for any issue of Acceptances must have a Period End Date falling on or before the Relevant Maturity Date of the Relevant Syndicated Facility.

6.3 Conversions to and Rollovers of Acceptances

On the Conversion Date of any Advance being converted to an issue of Acceptances, and on the Rollover Date of any issue of Acceptances, each Relevant Lender shall accept Drafts and purchase and take delivery of its Rateable Share of the resulting issue of Acceptances for its own account in the manner provided for in Section 5.5, save that in lieu of remitting the Net Acceptance Proceeds of its Rateable Share of such resulting issue of Acceptances to the Agent on the Borrowing Date of such resulting issue of Acceptances, each such Relevant Lender shall retain such Net Acceptance Proceeds for its own account and the Borrower shall pay to the Agent for the account of each Relevant Lender on that Borrowing Date the amount by which the aggregate face amount of each Relevant Lender's Rateable Share of such resulting issue of Acceptances exceeds such Net Acceptance Proceeds.

6.4 Not a Repayment

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

6.5 Consolidations

Each Libor Advance under the same Relevant Syndicated Facility that has an Interest Period ending on the same Period End Date, and each issue of Acceptances under the same Relevant Syndicated Facility that has a Tenor ending on the same Period End Date, shall be consolidated on such Period End Date to form a single Advance by way of Libor Loan or issue of Acceptances, respectively, unless and to the extent the Borrower elects to effect a Conversion or Rollover of part, but not all, of such Advance. Unless the Agent notifies the Borrower to the contrary, the maximum number of Libor Loans outstanding at any time is limited to eight (8).

ARTICLE 7 STANDBY INSTRUMENT PROVISIONS

7.1 Issuance

Standby Instruments may only be issued under the Revolver Facility and the Swing Line and the following provisions shall apply to their issuance:

- (a) A Standby Instrument may be requested by the Borrower to be issued by a Relevant Lender in Canadian Dollars or US Dollars or, with the prior consent of the Relevant Lender, any other currency. Unless the Agent otherwise agrees, the Lender that is the Swing Line Lender shall be the Issuing Bank for all Standby Instruments.
- (b) The aggregate Credit Amount of all Standby Instruments outstanding under the Relevant Facilities may not exceed CAD25,000,000 at any time. Standby

Instruments with an initial Credit Amount of less than CAD100,000 may only be issued under the Swing Line, unless the Agent otherwise consents. In addition, an Issuing Bank shall have the right, in its sole discretion, to limit the expiry date of any Standby Instrument. Following the occurrence of a Default, the Issuing Bank shall also have the right, in its sole discretion, to renew or extend the expiry date of any Standby Instrument or to amend any Standby Instrument.

- (c) The Borrower may not request the issuance of any Standby Instrument (i) if the aggregate Credit Amount of all Advances under the Relevant Facility would, after the issuance of the Standby Instrument in question, exceed the Swing Line Commitment or Total Revolver Commitment, as the case may be, or (ii) having a term which expires beyond the Relevant Maturity Date or more than one (1) year from its Drawdown Date.
- (d) The Borrower shall provide the Issuing Bank with the proposed form and content of such Standby Instrument complying with the foregoing provisions of this Section 7.1 no less than two (2) Business Days before the requested issuance of the Standby Instrument. The foregoing documentation must specify (i) the stated amount of the Standby Instrument requested, (ii) the requested date of issuance of such Standby Instrument, which must be a Business Day falling within the Availability Period for the Relevant Facility and (iii) the date on which such requested Standby Instrument is to expire. If the relevant Standby Instrument is being issued under the Revolver Facility, the Borrower shall also deliver to the Agent a copy of the foregoing documentation together with a Borrowing Request for the issuance of the requested Standby Instrument.
- (e) Upon receipt of the information and documentation in compliance with this Section 7.1 and subject to such changes to the form thereof as the applicable Issuing Bank may reasonably require, the applicable Issuing Bank shall, subject to Article 10, (or may, if the requested Standby Instrument is to be issued under the Swing Line), on the requested issue date issue a Standby Instrument in accordance with its usual and customary business practices. In addition, any amendment or renewal of any Standby Instrument shall be deemed to be an issuance of a new Standby Instrument and shall be subject to the requirements set forth above.
- (f) An Issuing Bank may delegate its obligations to issue any Standby Instrument to any Affiliate of it and assign to such delegated person (the “**Substitute Issuing Bank**”) its rights under this Agreement in relation thereto. Such Substitute Issuing Bank shall be entitled to rights identical to the rights of the delegating Issuing Bank in relation to such Standby Instrument had such Standby Instrument been issued by such Issuing Bank.

7.2 Reimbursement by the Borrower

7.2.1 *Authorization.* The Borrower unconditionally and irrevocably authorizes an Issuing Bank to pay the amount of any demand made on the Issuing Bank in accordance with the terms of any Standby Instrument issued for its account on demand without requiring proof of the

Borrower's agreement that the amount so demanded was due and notwithstanding that the Borrower may dispute the validity of any such demand or payment.

7.2.2 *Indemnity.* The Borrower shall indemnify and save an Issuing Bank harmless on a full indemnity basis from and against any and all payments, claims and losses and expenses which it may make, suffer or incur arising in any manner whatsoever out of the issuance of any Standby Instrument, including the making of, or refusal to make, any payments demanded thereunder (including any court costs and legal costs incurred in connection with any proceedings to restrain the Issuing Bank from making, or to compel the Issuing Bank to make, any such payment), save that the Borrower shall not be obliged to so indemnify the Issuing Bank to the extent such losses and expenses are determined by a Final Judgment to have directly resulted from the wilful misconduct or gross negligence of the Issuing Bank. This indemnity shall be unconditional, shall not be subject to any qualification or exception whatsoever, except as expressly provided for in the preceding sentence, and shall not be lessened, invalidated or otherwise prejudiced for any reason whatsoever, including by reason of (i) any lack of validity or enforceability of the Standby Instrument, (ii) any claim, set-off, defence or other right the Borrower may have against the beneficiary of the Standby Instrument, including any claim that a demand for payment under the Standby Instrument is fraudulent or (iii) any of the matters referred to in Section 7.4.

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

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

7.3 Refunding of Advances Amongst Lenders

7.3.1 *Deemed Advances.* Any Standby Instrument Disbursement deemed to have been made as an Advance under the Revolver Facility pursuant to Subsection 7.2.4 shall be deemed to have been made by the Issuing Bank on behalf of the Revolver Lenders by way of Canadian Prime Rate Loan (if denominated in Canadian Dollars) or US Base Rate Loan (if denominated in US Dollars).

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

- (a) the Issuing Bank shall forthwith notify the Agent of the amount and currency of such Advance;

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

7.4 Issuing Bank Not Liable

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

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

and none of the above shall lessen, invalidate or otherwise prejudice any of the rights of the Issuing Bank hereunder or the obligations of the Borrower under Subsection 7.2.2, except to the extent such obligation, responsibility or liability is determined by a Final Judgment to have directly resulted from the wilful misconduct or gross negligence of the Issuing Bank.

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

7.5 Standby Instrument Fees

7.5.1 *Revolver Lenders.* The Borrower shall pay a fee in Canadian Dollars to the Agent for the account of each of the Revolver Lenders based on the Credit Amount of each Standby Instrument issued or renewed under the Revolver Facility which shall be in the amount determined by the Agent to be equal to the sum of the products for each day during the term of such Standby Instrument obtained by multiplying (a) the Credit Amount thereof at the end of the day multiplied by (b) the quotient of (i) the Applicable Margin divided by (ii) 365 or 366, as the case may be. Such fee shall be paid quarterly in arrears on the third Business Day of each calendar quarter until the Credit Amount of such Standby Instrument is reduced to nil, at which time the final payment of such fee shall be paid.

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

7.5.3 *Standby Instruments under the Swing Line.* The Borrower shall pay a fee to the Swing Line Lender in relation to each Standby Instrument issued or renewed under the Swing Line which shall be in the amount determined by the Swing Line Lender to be equal to the greater of (a) the sum of the products for each day during the term of such Standby Instrument obtained by multiplying (i) the maximum amount available to be drawn upon under such Standby Instrument at the end of the day multiplied by (ii) the quotient of (A) the Applicable Margin divided by (B) 365 or 366, as the case may be, and (b) CAD500. Such fee shall be paid quarterly in arrears on the third Business Day of each calendar quarter until the Credit Amount of such Standby Instrument is reduced to nil, at which time the final payment of such fee shall be paid. Unless the Swing Line Lender otherwise agrees, such fee shall be paid in the same currency denomination as the currency denomination of the Standby Instrument. All amounts paid to the Swing Line Lender pursuant to this Subsection 7.5.3 shall be retained by the Swing Line Lender for its own account.

ARTICLE 8
INTEREST AND FEE CALCULATIONS AND CHANGES IN CIRCUMSTANCES

8.1 Interest

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

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

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

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

8.2 Fees in Respect of Acceptances

The Borrower shall pay to the Agent for the account of each Relevant Lender a Stamping Fee on the relevant Borrowing Date with respect to each Draft issued by the Borrower and accepted by that Relevant Lender under each Relevant Syndicated Facility (other than the USD Term Facility) calculated and payable (without duplication) at the time and in the manner specified in Article 5.

8.3 Standby Instrument Fees

The Borrower shall pay to the Agent (for Standby Instruments issued under the Revolver Facility) for the account of the Revolver Lenders or to the Swing Line Lender (for Standby Instruments issued under the Swing Line) the Standby Instrument Fees payable (without duplication) pursuant to and in accordance with Article 7.

8.4 Standby Fee

8.4.1 *Revolver Facility.* The Borrower shall pay to the Agent for the account of the Revolver Lenders a standby fee in relation to their respective Revolver Commitments based on the unused portion of the Revolver Facility payable in Canadian Dollars which shall be in the amount determined by the Agent to be equal to the sum of the products for each day during the Availability Period for the Revolver Facility of (a) the amount by which the Total Revolver Commitment exceeds the aggregate Credit Amount of all Advances under the Revolver Facility at the end of the day multiplied by (b) the fraction of (i) the Applicable Margin divided by (ii) 365 or 366, as the case may be.

8.4.2 *Swing Line.* The Borrower shall pay to the Swing Line Lender for its own account a standby fee in relation to the Swing Line Commitment based on the unused portion of the Swing Line payable in Canadian Dollars which shall be in the amount determined by the Swing Line Lender to be equal to the sum of the products for each day during the Availability Period for the Swing Line of (a) the amount by which the Swing Line Commitment exceeds the aggregate Credit Amount of all Advances under the Swing Line at the end of the day multiplied by (b) the fraction of (i) the Applicable Margin divided by (ii) 365 or 366 as the case may be.

8.4.3 *Payment Dates.* The Borrower shall pay these standby fees quarterly in arrears for each calendar quarter on the third Business Day of the following calendar quarter. The final payment of each of these standby fees will be made on the Revolver Maturity Date or any earlier date of termination of the Total Revolver Commitment or the Swing Line Commitment, as applicable.

8.5 Interest and Fee Calculations and Payments

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

8.5.2 *Day Count Fraction.* The rates of interest per annum payable on or in respect of Floating Rate Loans and Standby Fee and Standby Instrument Fees are expressed on the basis of a 365 or 366 day year, as applicable. Each Stamping Fee, Acceptance Rate, CDOR and BA

Reference Rate is expressed on the basis of a 365 day year. The rates of interest per annum payable on or in respect of Libor Loans are expressed on the basis of a 360 day year.

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

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

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

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

8.5.7 *Changes in Applicable Margin.* On the third Business Day following each date the Borrower delivers a Compliance Certificate to the Agent pursuant to Subsection 12.1.12 which discloses a Leverage Ratio at a Level which differs from Level III or the Level at which the Leverage Ratio disclosed in the immediately preceding Compliance Certificate delivered to the Agent pursuant to this Agreement was at, the Applicable Margins shall change to reflect that new Level. The Applicable Margin applicable to all Loans outstanding on the date any such change takes effect and the Standby Fees will be adjusted immediately, but without retroactive effect. There will be no adjustments made with respect to outstanding Acceptances. Notwithstanding the foregoing: (i) if the Borrower fails to deliver a Compliance Certificate to the Lender by the date required to do so under Subsection 12.1.12, the Leverage Ratio shall be deemed as from such date to be at Level IV until such failure is cured, at which time the Applicable Margin shall be determined in accordance with the table set forth in the definition of Applicable Margin, but without any adjustments having retroactive effect, and (ii) if an Event of Default has occurred which has not been waived by the Required Lenders, (A) any reduction in the Applicable Margin which would, but for this provision, take place shall be deferred until the first Business Day of the calendar month following the month in which the Required Lenders waive such Event of Default and (B) the Applicable Margin applicable to all Types of Advances shall, to the extent permitted by applicable law, be increased by two percent (2%) per annum.

8.6 **Increased Costs**

If any Change in Law:

- (a) subjects any Finance Party (or its Holding Body Corporate) to, or causes the withdrawal or termination of a previously available exemption with respect to, any Taxes or changes the basis of taxation of payments owing to any Finance

Party or increases any Taxes payable by any Finance Party (or its Holding Body Corporate) on or in respect of payments of principal, interest, Fees or other amounts payable by the Borrower to that Finance Party under this Agreement or any other Loan Document (excluding any imposition or increase in the rate of Taxes payable on the net income or capital of any Finance Party (or its Holding Body Corporate));

- (b) imposes, modifies or deems applicable any reserve, liquidity, cash, margin, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement against assets held by, or deposits with or for the account of, or loans or commitments by, or any other acquisition of funds for loans by, any Finance Party, (or its Holding Body Corporate), or on any unutilized portion of any Credit Facility, or on any obligation of any Finance Party under any Loan Document;
- (c) imposes on any Finance Party (or its Holding Body Corporate) any Taxes on reserves or deemed reserves in respect of the undrawn portion of any Credit Facility;
- (d) requires any Finance Party (or its Holding Body Corporate) to maintain any capital adequacy or additional capital requirement (including a requirement which affects that Finance Party's (or its Holding Body Corporate's) allocation of capital resources to its obligations) in respect of any Credit Facility, its Rateable Share in any Advance, any Loan Document or that Finance Party's obligations hereunder or under any other Loan Document, or imposes any other condition or requirement with respect to the maintenance by any Finance Party (or its Holding Body Corporate) of a contingent liability with respect to any Credit Facility, its Rateable Share in any Advance or any Loan Document; or
- (e) imposes on any Finance Party (or its Holding Body Corporate) any other condition or requirement with respect to this Agreement, any other Loan Document or a Credit Facility,

and such Finance Party (for the purposes of this Section, the "Affected Lender") determines (which determination shall be conclusive and bind the Borrower) that such occurrence has the effect of:

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

- (i) causing the Affected Lender to make any payment or to forego any interest, fees or other return on or calculated by reference to any sum received or receivable by that Finance Party under any Loan Document,

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

8.7 Market Disruption

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

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

(a “**Libor Disruption Event**”), then that Relevant Lender (for the purposes of this Section, the “**Affected Lender**”) may give notice of such determination to the Agent who will promptly notify the Borrower. If an event referred to in paragraph (e) occurs, all Lenders under each Relevant Syndicated Facility shall be Affected Lenders and the Agent will promptly notify the Borrower and all Lenders thereof. Thereafter, and until the Agent notifies the Borrower and the Affected Lender that the Libor Disruption Event no longer exists or no longer applies, the Borrower’s right to require such Affected Lender to make its Rateable Share of any such Libor Loan available in the manner requested shall be suspended and the Affected Lender shall, subject

to Section 8.8, instead make its Rateable Share available by way of an advance in US Dollars which shall bear interest payable in the same manner as any US Base Rate Loan.

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

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

(a "BA Disruption Event") then the Agent will promptly notify the Borrower and each of the other Relevant Lenders of such determination. If an event referred to in paragraph (c) occurs, all Lenders under each Relevant Syndicated Facility shall be Affected Lenders and the Agent will promptly notify the Borrower and all Lenders thereof. Thereafter, and until the Agent notifies the Borrower and the Lenders that the BA Disruption Event no longer exists or no longer applies, the Borrower's right to request an Advance by way of Acceptances shall be suspended and any Borrowing Request given by the Borrower with respect to any proposed issue of Acceptances that has not yet been made shall be deemed to be replaced by a Borrowing Request for a Canadian Prime Rate Loan in the same Credit Amount as the requested issue of Acceptances.

8.8 Illegality

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

Affected Advance and the Affected Lender shall not be required to make its Rateable Share of such Affected Advance available in any manner.

8.9 Withholding Taxes Generally

8.9.1 *No Withholding; Gross-Up Requirement.* Subject to Subsection 8.9.5, each payment required to be made by the Borrower under each Loan Document shall be made without set-off or counterclaim, free and clear of, and without deduction or withholding for or on account of, any Taxes (other than the Finance Party's Own Taxes), except to the extent such deduction or withholding is required by any Applicable Law, as modified by the administrative practice of any relevant Governmental Authority, then in effect. To the extent and each time the Borrower is so required to deduct or withhold Taxes (other than the Finance Party's Own Taxes) from or in respect of any such payment to or for the account of any Finance Party (for the purposes of this Section 8.9, the "**Affected Lender**"), then the Borrower will:

- (a) promptly notify the Agent of such requirement;
- (b) pay to the relevant Governmental Authority when due the full amount required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower to or for the account of the Affected Lender under this Subsection 8.9.1);
- (c) promptly forward to the Agent an official receipt (or a certified copy), or other documentation reasonably acceptable to the Agent, evidencing such payment to such Governmental Authority; and
- (d) forthwith pay to the Affected Lender, in addition to the payment to which the Affected Lender is otherwise entitled under such Loan Document, such additional amount as is necessary to ensure that the net amount actually received by the Affected Lender (free and clear of, and net of, any such Taxes, including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower under this Subsection 8.9.1, whether assessed against the Borrower or the Affected Lender) will equal the full amount the Affected Lender would have received had no such deduction or withholding been required.

8.9.2 *Non-Withheld Part XIII Tax.* If any Finance Party is subject to Part XIII Tax in respect of any payment made by the Borrower under any Loan Document, but such Tax is not levied by way of deduction or withholding (any such Part XIII Tax being "**Non-Withheld Part XIII Tax**" and any such Finance Party, for the purposes of this Section 8.9, also an "**Affected Lender**"), the Borrower shall pay to such Affected Lender, at the time the Borrower makes such payment and in addition to such payment, such additional amount as is necessary to ensure that the total amount received by such Affected Lender is equal to such payment plus the amount of the Non-Withheld Part XIII Tax exigible in respect of the aggregate of the payment and the additional amount payable under this Subsection 8.9.2.

8.9.3 *Indemnity.* If the Borrower fails to pay to the relevant Governmental Authority when due any Taxes (other than the Finance Party's Own Taxes) that it was required to deduct or withhold under Subsection 8.9.1 in respect of any payment to or for the benefit of any Affected

Lender under any Loan Document, or fails to promptly furnish the Agent with the documentation referred to in Subsection 8.9.1(c), or fails to pay to any Affected Lender any Non-Withheld Part XIII Tax in accordance with Subsection 8.9.2, the Borrower shall forthwith on demand indemnify such Affected Lender on a full indemnity after-Taxes basis from and against the full amount of any Taxes (including Non-Withheld Part XIII Tax, interest and penalties), losses and expenses which such Affected Lender may suffer or incur as a result of such failure.

8.9.4 *Indemnity for Additional Income Tax.* The Borrower shall also indemnify each Affected Lender on a full indemnity after-Tax basis, for any additional Taxes on net income that such Affected Lender may be obliged to pay as a result of the payment of additional amounts under this Section 8.9.

8.9.5 *Assignment and Subsequent Payment.* If as a result of any assignment or participation of the whole or any part of any Commitment (including any Advance thereunder) of any Lender made pursuant to Subsection 15.10.3 or 15.10.4 before the occurrence of an Event of Default: (i) Part XIII Tax is imposed by reason of any payment made in connection with such assignment or participation being treated as interest payable that is subject to Part XIII Tax, or (ii) the Borrower would be required to deduct or withhold Taxes and make increased payments to the assignee pursuant to Subsection 8.9.1, or pay any Non-Withheld Part XIII Tax pursuant to Subsection 8.9.2, in excess of such increased payments which the Borrower would have been required to pay to the assigning or participating Lender pursuant to Subsection 8.9.1(d) or 8.9.2 had such assignment or participation not taken place, then in either case the provisions of Subsection 8.9.1(d) or 8.9.2, as applicable, requiring such increased payments shall not apply to the extent of such imposition or excess.

ARTICLE 9 REPAYMENT AND PREPAYMENT

9.1 Repayment of the Credit Facilities

9.1.1 *Revolver Facility.* The Borrower shall repay on the Revolver Maturity Date to the Agent for the account of each Revolver Lender such Lender's Rateable Share of each outstanding Advance made under the Revolver Facility.

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

9.1.3 *Term Facility.* The Borrower shall repay on the Term Maturity Date to the Agent for the account of each Term Lender such Term Lender's Rateable Shares of each outstanding Advance under each of the CAD Term Facility and the USD Term Facility.

9.1.4 *Cancellation.* Each Commitment under each Credit Facility shall be cancelled on its Relevant Maturity Date.

9.2 Voluntary Repayments

9.2.1 *Generally.* The Borrower shall have the right at any time and from time to time to repay all or any portion of each Loan made to it under each Credit Facility, without premium or

penalty, which prepayments shall, in the case of a Libor Loan, be made on its current Period End Date. In the case of each Relevant Syndicated Facility, such right may only be exercised if the Borrower delivers a Repayment Notice to the Agent specifying the proposed repayment date (which must be no earlier than (i) the third (3rd) Business Day thereafter if a Libor Loan is being repaid, and (ii) the Business Day thereafter if a Floating Rate Loan is being repaid) and the amount of such Loan to be repaid (which must be in a principal amount of CAD1,000,000 or a multiple of CAD100,000 in excess thereof). The Borrower shall repay such Loan on such repayment date to the extent specified in such Repayment Notice.

9.2.2 *Effect of Voluntary Repayment.* Each Advance under the Revolver Facility or the Swing Line voluntarily repaid pursuant to Subsection 9.2.1 shall not affect the amount of the Commitments under the Revolver Facility or the Swing Line. However, the Total CAD Term Commitment shall be permanently cancelled and reduced by the Credit Amount of each Advance under the CAD Term Facility voluntarily prepaid pursuant to Subsection 9.2.1 and the Total USD Term Commitment shall be permanently cancelled and reduced by the amount of each Advance under the USD Term Facility voluntarily prepaid pursuant to Subsection 9.2.1.

9.3 Cancellation

9.3.1 *Voluntary Cancellation.* The Borrower shall have the right at any time and from time to time to permanently cancel, without premium or penalty, all or any unused portion of the Revolver Facility or the Swing Line. Subject to the next sentence, such right may only be exercised by the Borrower delivering a Cancellation Notice to the Agent specifying the proposed effective date of cancellation (which must be no less than five (5) Business Days thereafter), the Revolver Facility and/or Swing Line being affected, and the amounts of the Revolver Facility and/or the Swing Line to be cancelled (which must be in a principal amount of CAD1,000,000 or a multiple of CAD100,000 in excess thereof). No reduction or cancellation of the Total Revolver Commitment below the amount of CAD20,000,000 shall be permitted pursuant to this Section 9.3 unless the Swing Line Commitment has been permanently reduced to nil or cancelled in its entirety or it is reduced at the same time and to the same extent. The Total Commitment (and each of the Total Revolver Commitment and the Swing Line Commitment affected by the cancellation) shall permanently be cancelled and reduced on the effective date of each such cancellation in the amount so cancelled.

9.4 Mandatory Prepayment

9.4.1 *Asset Dispositions.* Except to the extent the Borrower is relieved of this obligation pursuant to Subsection 9.4.3, the Borrower shall pay to the Agent for the account of the Relevant Lenders under each Relevant Facility in prepayment of the Loan Obligations the Lenders' Mandatory Prepayment Share of the amount equal to the Net Proceeds Amount from any Asset Disposition (excluding any Asset Disposition that takes place as part of the ARS Forward Transactions) to the extent it is not applied to a Property Reinvestment Application within 12 months after such Asset Disposition. Upon receipt thereof, the Agent shall promptly distribute such Lender's Rateable Share of the Lenders' Mandatory Prepayment Share to the Relevant Lenders rateably according to their respective Commitments under each Relevant Facility to the extent of the Advances then outstanding thereunder and return any balance to the Borrower. The respective Commitments of the Relevant Lenders under each Relevant Facility shall permanently reduce on the 15th day after the first anniversary of each such Asset

Disposition by the amount (or equivalent amount in Canadian Dollars at the rate of exchange advised by the Agent) of each such amount required to be prepaid to such Relevant Lender pursuant to the preceding sentence (or which would have been required to be prepaid if such Relevant Lender's share in Advances under the Relevant Facility were to be outstanding to such extent). Within 15 days after the first anniversary of each such Asset Disposition, the Borrower shall notify the Agent of the amount it is required to so prepay and prepay such amount to the Agent for the account of the Relevant Lenders.

9.4.2 *Application of Repayments.* Each prepayment made pursuant to Subsection 9.4.1 shall be applied (i) first to prepay Advances under the CAD Term Facility to the extent thereof, (ii) second, to prepay Advances under the USD Term Facility to the extent thereof, (iii) third, to prepay Advances under the Revolver Facility to the extent thereof (with each Advance measured according to its Credit Amount) and (iv) fourth, to prepay Advances under the Swing Line to the extent thereof (with each Advance measured according to its Credit Amount). Each such prepayment shall permanently cancel and reduce the Commitments of each of the Relevant Lenders under each such Relevant Facility to the extent of the Credit Amount or amount (in the case of the USD Term Facility) of such repayment.

9.4.3 *Exemption.* The Borrower shall be relieved of its obligation to prepay Loan Obligations pursuant to Subsection 9.4.1 until the aggregate total amount payable to the Lenders pursuant to Subsection 9.4.1 exceeds CAD10,000,000 (at which time its obligation to prepay Loan Obligations under Subsection 9.4.1 shall only extend to such excess) if no Default has occurred that is continuing nor would a Default occur as a consequence of any such Asset Disposition, Debt issue or Capital Stock or rights issue.

9.5 Manner of Repayment

On the date of each reduction of each Commitment of each Relevant Lender under each Relevant Facility pursuant to Section 9.3 or 9.7, the Borrower shall repay to the Agent for the account of such Relevant Lender such amount on account of such Relevant Lender's Rateable Share of Advances made to the Borrower under each Relevant Facility as may be required to ensure that the Credit Amount or amount (in the case of the USD Term Facility) of such Relevant Lender's Rateable Share of all Advances under each Relevant Facility does not exceed its Commitment under each Relevant Facility at that time after giving effect to that reduction. On the Relevant Maturity Date, the Borrower shall repay all Advances then outstanding under each Relevant Facility. Each Lender shall apply any amount so repaid to it as follows:

- (a) first, to repay its Rateable Share of Loans under each Relevant Facility;
- (b) second, to prepay to the Relevant Lender (or, at the option of the Relevant Lender, provide cash collateral for) the obligations of the Borrower under Section 5.7 in respect of Acceptances issued for the Borrower's account under each Relevant Facility; and
- (c) third, to prepay to each Issuing Bank (or, at the option of each Issuing Bank, provide cash collateral for) the Borrower's obligations under Subsection 7.2.2 in respect of outstanding Standby Instruments issued by each Issuing Bank until

such Standby Instruments expire or are drawn upon, whereupon each Issuing Bank shall account to the Borrower for the amount so paid to it and remit any overpayment to the Agent to be applied to any other Finance Obligations then due or, if none, returned to the Borrower.

Each Relevant Lender or Issuing Bank, as applicable, receiving cash collateral pursuant to paragraph (b) or (c) above agrees to allow and remit to the Agent, together with (and to be applied in the same manner as) any overpayment referred to in paragraph (c) above, an amount determined by such Relevant Lender or Issuing Bank, as applicable, to be the amount of interest that would accrue on a deposit placed with it in the amount of the unapplied balance from time to time of such cash collateral at its prevailing rate for overnight deposits of comparable amount.

9.6 Facility Excesses by Reason of Foreign Currency Fluctuations

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

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

9.7 Prepayment of Affected Lenders

The Borrower shall have the right to permanently cancel without premium or penalty all, but not part, of each Commitment of each Affected Lender; provided that, no Default has occurred. Such right may only be exercised by the Borrower delivering a notice to the Agent advising of such cancellation and specifying the effective date of cancellation which must be no less than five (5) Business Days after and no later than 30 days after the date the Borrower receives notice that the relevant Lender has become an Affected Lender. The Borrower shall prepay the Affected Lender's Rateable Share of all outstanding Advances on such effective date of cancellation, the Affected Lender's Commitments shall be cancelled and permanently reduce to nil and such Affected Lender shall be released from its obligations to lend hereunder. Unless such Affected Lender is replaced pursuant to Subsection 15.10.7, the Total Revolver Commitment (if the Affected Lender was a Revolver Lender), the Total CAD Term Commitment (if the Affected Lender was a CAD Term Lender), the Swing Line Commitment (if the Affected

Lender was the Swing Line Lender) and the Total USD Term Commitment (if the Affected Lender was a USD Term Lender) shall be cancelled and permanently reduced by the respective amounts of the reduction in such Affected Lender's Revolver Commitment, CAD Term Commitment, Swing Line Commitment and USD Term Commitment.

9.8 Repayment Notice

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

9.9 Netting of Payments

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

9.10 Place of Payment of Principal, Interest and Fees

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

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

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

ARTICLE 10 CONDITIONS PRECEDENT

10.1 Conditions Precedent to Effectiveness

The amendments to and restatement of the Existing Credit Agreement contemplated by this Agreement shall not be effective unless and until the Agent notifies the Borrower and the Lenders (an “**Effective Notice**”) that the Agent has received each of the following in form and substance satisfactory to the Agent (in original or, at the Agent’s discretion, pdf, facsimile or other copy) or (to the extent the Agent has not received any of the following) the Required Lenders have waived receipt thereof to permit the amendments contemplated by this Agreement:

- (a) The Agent has received all of the following in form and substance satisfactory to the Agent:
 - (i) a Certificate of each Obligor (A) attaching true copies of (1) the Constitutional Documents of such Obligor and (2) all necessary internal corporate action taken by such Obligor to authorize the execution, delivery and performance of each Loan Document and the consummation of the transactions contemplated thereby, (B) as to incumbency and true signatures of each Responsible Officer and (C) as to such other matters as the Agent may reasonably require;
 - (ii) an original (or, at the Agent’s discretion, a pdf copy of) certificate of status with respect to each Obligor for its jurisdiction of incorporation;
 - (iii) original signed copies (or, at the Agent’s discretion, pdf copies) of each of the Loan Documents to which each Obligor is a party duly executed by each party thereto (including, for certainty, the Confirmation);
 - (iv) certified copies of all Authorizations required to enable each Obligor to execute, deliver, incur and perform its obligations under each Loan Document to which it is a party and consummate the transactions contemplated thereby;
 - (v) opinions from the Borrower’s Counsel addressed to the Agent in respect of each Obligor, the Loan Documents and such other matters as the Agent or Lender’s Counsel may reasonably require;
 - (vi) a Certificate of the Borrower certifying that all of the conditions contained in Clauses (i) through (v) inclusive above have been satisfied, save for those outlined in the Post-Closing Undertaking;

- (vii) a report on the matters referred to in this Section 10.1 from the Lender's Counsel addressed to the Agent; and
- (viii) such other agreements, documents and instruments as the Agent may reasonably require.

10.2 Conditions to all Drawdowns

The Borrower agrees to satisfy each of the following conditions precedent to each Drawdown. The Lenders shall not be obliged to make or allow, any Drawdown, including the first Drawdown under this Agreement, unless and until the Agent has issued a Closing Notice and unless each of the following conditions precedent to Drawdown has been satisfied or (to the extent not satisfied) waived by the Required Lenders to permit such Drawdown to occur:

- (a) each of the representations and warranties of the Borrower deemed to be repeated in Section 11.2 is true, accurate and complete in all respects as of the date such Drawdown is requested and as of the proposed Drawdown Date as though made on and as of each such date;
- (b) no Default has occurred that is continuing on the date such Drawdown is requested or on the proposed Drawdown Date, nor would any Default result after giving effect to the requested Drawdown; and
- (c) each other term and condition applicable to such Drawdown contained in this Agreement has been fully complied with.

10.3 Conditions to Conversions and Rollovers

The Borrower agrees to satisfy each of the following conditions precedent to each Borrowing by way of a Conversion of an outstanding Advance to a Libor Loan or an issue of Acceptances or any Rollover. The Relevant Lenders under a Relevant Syndicated Facility shall not be obliged to make or allow, and the Borrower shall not be entitled to request, any Borrowing by way of a Conversion of an outstanding Advance to a Libor Loan or an issue of Acceptances or any Rollover unless each of the following conditions precedent to such Borrowing has been satisfied or (to the extent not satisfied) waived by the Required Lenders to permit such Borrowing to occur:

- (a) each of the representations and warranties deemed to be repeated under Section 11.2 in respect of such Borrowing is true, accurate and complete in all respects as of the date such Borrowing is requested and as of the proposed Borrowing;
- (b) no Default has occurred that is continuing on the date such Borrowing is requested or on the proposed Borrowing Date, nor would any Default result after giving effect to the requested Borrowing; and
- (c) each other term and condition applicable to such Borrowing contained in this Agreement shall have been fully complied with.

10.4 Entry Into Effect of this Agreement

Upon delivery of the Effective Notice, this Agreement shall amend and restate the Existing Credit Agreement in its entirety as of and from the date hereof and the Existing Credit Agreement as so amended and restated is hereby ratified and confirmed by the parties hereto. This Agreement is not intended by the parties to, and shall not constitute, a payment, discharge, satisfaction or novation of any obligation of the Borrower to the Finance Parties, including the whole or any item or part of the Finance Obligations (as defined in the Existing Credit Agreement) remaining outstanding and owing to any of the Finance Parties until paid in full in accordance with the provisions of this Agreement. The Borrower hereby confirms to and agrees with the Finance Parties that its Loan Obligations (as defined in the Existing Credit Agreement) shall continue in full force and effect in accordance with their respective terms (amended and restated, as applicable, by this Agreement).

10.5 Conversion Transactions

Reference is made to the CML Information Circular, and in particular the transactions outlined and referred to on pages 25-27 of the CML Information Circular under the captions "Arrangement Steps", "Post Arrangement Structure" and "Arrangement Agreement", (such transactions, collectively, the "**Conversion Transactions**"). Subject to the next sentence, the Agent and the Lenders hereby consent to the Conversion Transactions substantially in the manner set out in the CML Information Circular and Arrangement Agreement and waive any Default or Event of Default that would be caused by the Conversion Transactions. This consent is conditional upon (x) the Conversion Transactions being implemented on or before January 1, 2011 and (y) the Effective Notice being given contemporaneously with the completion of the Conversion Transactions. This consent only relates to the Conversion Transactions.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Borrower Representations and Warranties

Subject to the last sentence of this Section 11.1, to induce the Lenders to make the Credit Facilities available to the Borrower, the Borrower represents and warrants to and in favour of the Finance Parties as follows:

11.1.1 *Organization; Power and Authority.* Each Obligor is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and is duly qualified as a foreign corporation and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Obligor has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver the Loan Documents to which it is a party and to perform the provisions hereof and thereof.

11.1.2 *Authorization, etc.* The Loan Documents have been duly authorized by all necessary corporate or other action on the part of each Obligor party thereto and each Loan Document constitutes a legal, valid and binding obligation of each Obligor party thereto enforceable against each such Obligor in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

11.1.3 *Disclosure.* No information furnished by the Borrower, the Fund or any Subsidiary to the Finance Parties in connection with any of the Loan Documents contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made and as of the date made.

11.1.4 *Organization and Ownership of Capital Stock of Subsidiaries; Affiliates.*

- (a) Schedule 5 contains (except as noted therein) complete and correct lists (i) of the Borrower's Subsidiaries, other than Immaterial Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of each class of its Capital Stock outstanding owned by the Borrower and each other Subsidiary, (ii) of the Borrower's Affiliates, other than Subsidiaries, and (iii) of the Borrower's directors and Responsible Officers. Each Subsidiary is a Guarantor hereunder as at the date hereof or within the timeframe required under Section 12.1.7(a), as the case may be, other than Immaterial Subsidiaries. No Immaterial Subsidiary has Material assets, liabilities or operations.
- (b) All of the outstanding Capital Stock of each Subsidiary shown in Schedule 5 as being owned by the Borrower and its Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by the Borrower or another Subsidiary free and clear of any Lien not permitted by the Loan Documents.
- (c) Each Subsidiary identified in Schedule 5 is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and in the case of each Subsidiary organized outside of the United States, such Subsidiary is in possession of all material governmental or public approvals necessary for the conduct of its business, and is duly qualified as a foreign corporation or other legal entity and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.
- (d) No Subsidiary is a party to, or otherwise subject to, any legal, regulatory, contractual or other restriction (other than this Agreement, the agreements listed

on Schedule 5 and customary limitations imposed by corporate law statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Borrower or any of its Subsidiaries that owns outstanding Capital Stock or similar equity interests of such Subsidiary.

11.1.5 *Financial Statements; Material Liabilities.*

- (a) The Borrower has delivered to the Agent copies of the consolidated financial statements of the Borrower and its Subsidiaries. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Borrower and its Subsidiaries as of the respective dates specified in such Schedule and the consolidated results of their respective operations and cash flows for the respective periods so specified and the consolidated results have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year end adjustments). The Borrower and its Subsidiaries do not have any Material liabilities that are not disclosed on such financial statements.
- (b) The Obligors have filed all management information circulars, reports and other material documents required to be filed by it pursuant to applicable securities legislation and the by-laws, rules, regulations and policies of each stock exchange on which any of its equity interests is listed ("**Securities Reports**"). Each Securities Report was, as of the date of filing, in compliance in all material respects with all applicable requirements under applicable securities legislation and the by-laws, rules, regulations and policies of each such stock exchange, and none of the Securities Reports, as of their respective filing dates, included any "misrepresentation" (as such term is defined in the *Securities Act* (Ontario)).

11.1.6 *Compliance with Laws, Other Instruments, etc.* The execution, delivery and performance by the Obligors of the Loan Documents will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien except pursuant to the Loan Documents in respect of any property of any Obligor or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by laws, or any other agreement or instrument to which any Obligor or any Subsidiary is bound or by which any Obligor or any Subsidiary or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to any Obligor or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to any Obligor or any Subsidiary.

11.1.7 *Governmental Authorizations, etc.* No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by any Obligor of any Loan Document to which it is a party. It is not necessary to ensure the legality, validity, enforceability or admissibility into evidence in any jurisdiction in which any Obligor conducts its business or which asserts jurisdiction over any properties of such Obligor, that any other document be filed, recorded or

enrolled with any Governmental Authority, or that any Loan Document or document be stamped with any stamp, registration or similar transaction tax.

11.1.8 *Litigation; Observance of Agreements, Statutes and Orders.*

- (a) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries or any property of the Borrower or any of its Subsidiaries in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.
- (b) Neither the Borrower nor any of its Subsidiaries is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws or the USA Patriot Act) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

11.1.9 *Taxes.* The Borrower and each Subsidiary has timely filed with the appropriate Governmental Authorities all tax returns that are required to have been filed in any jurisdiction (which tax returns are true, correct and complete and have been prepared in accordance with applicable laws in all Material respects), and have paid all taxes shown to be due and payable on such returns and all other taxes levied or assessed upon them or their properties, assets, income or franchises, to the extent such taxes have become due and payable and before they have become delinquent, except for any tax returns or taxes (i) the amount of which is not, individually or in the aggregate, Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and in accordance with applicable law need not be paid until the resolution of such proceedings and with respect to which the Borrower or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. Neither the Borrower nor any Subsidiary knows of any basis for any other tax that could reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of federal, provincial, state or other taxes for all fiscal periods are adequate. Schedule 9 indicates those federal income tax returns of the Borrower and its Subsidiaries that are currently the subject of audit by the United States Internal Revenue Service or by the Canada Revenue Agency. Except as disclosed in Schedule 9, neither any Obligor nor any Subsidiary has made or filed any agreement, waiver or other arrangement providing for an extension of time with respect to the assessment or re assessment of any taxes or with respect to the filing of any tax returns for any taxation year.

11.1.10 *itle to Property; Leases.* The Borrower and its Subsidiaries have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 11.1.5 or purported to have been acquired by the Borrower or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the

aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

11.1.11Li *censes, Permits, etc.*

- (a) The Borrower and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others;
- (b) To the best knowledge of the Borrower, no product of the Borrower or any of its Subsidiaries infringes in any Material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other person; and
- (c) To the best knowledge of the Borrower, there is no Material violation by any person of any right of the Borrower or any of its Subsidiaries with respect to any patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Borrower or any of its Subsidiaries.

11.1.12E *RISA; Non U.S. Plans.*

- (a) Neither the Borrower nor any of its ERISA Affiliates operates, maintains, administers, contributes to (or is required to contribute to) any defined benefit plan (as defined in Section 3(35) of ERISA) or any multiemployer plan (as defined in Section 3(37) of ERISA) that in either case is subject to Title IV of ERISA. All premiums, contributions and any other amounts required by applicable Plan documents or applicable laws to be paid or accrued by the Borrower and each ERISA Affiliate have been paid or accrued as required, except where failure to make such payments could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.
- (b) Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the present value of the accrued benefit liabilities under each Non U.S. Plan that is funded, determined as of the end of each Obligor's most recently ended Fiscal Year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non U.S. Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meanings specified in Section 3 of ERISA.
- (c) All Plans subject to ERISA and all Non U.S. Plans have been established, operated, administered and maintained in compliance with all laws, regulations and orders applicable thereto, except where failure so to comply could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. All premiums, contributions and any other amounts required by applicable Non U.S. Plan documents or applicable laws to be paid or accrued by the Borrower and its Subsidiaries have been paid or accrued as required, except

where failure so to pay or accrue could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

- (d) The execution and delivery of this Agreement and the performance of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of section 406(a) of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A) (D) of the Code.

11.1.13 *Use of Proceeds; Margin Regulations.* The Borrower will use the proceeds of the Credit Facilities in accordance with Section 2.1, 3.1.1 and 4.1 as applicable. No part of such proceeds will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve an Obligor in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5.00% of the value of the consolidated assets of the Borrower and its Subsidiaries and the Borrower does not have any present intention that margin stock will constitute more than 5.00% of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

11.1.14 *Existing Debt; Future Liens.*

- (a) Schedule 10 sets forth a complete and correct list of all outstanding Debt of the Borrower and its Subsidiaries as of the date hereof (including a description of the obligors and obligees, principal amount outstanding and collateral therefor, if any, and Guarantee thereof, if any), except for Debt that will be repaid and discharged contemporaneously with the date hereof. There has been no Material change since Closing in the amounts, interest rates, sinking funds, instalment payments or maturities of the Debt of the Borrower or its Subsidiaries, except as specifically set forth on such Schedule 10. Neither the Borrower nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Debt of the Borrower or such Subsidiary and no event or condition exists with respect to any Debt of the Borrower or any Subsidiary that would permit (or that with notice or the lapse of time, or both, would permit) one or more persons to cause such Debt to become due and payable before its stated maturity or before its regularly scheduled dates of payment.
- (b) Neither the Borrower nor any Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its assets, whether now owned or hereafter acquired, to be subject to a Lien not permitted by Section 12.2.3.
- (c) Neither the Borrower nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Debt of the Borrower or such Subsidiary, any agreement relating thereto or any other agreement (including, but not limited to, its charter or other organizational document) which limits the

amount of, or otherwise imposes restrictions on the incurring of, Debt of the Borrower or any Subsidiary, except as specifically indicated in Schedule 10.

11.1.15 *Foreign Assets Control Regulations, etc.*

- (a) Neither the Borrower's performance of the transaction contemplated hereunder nor its use of the proceeds of any Advance hereunder will violate the *Trading with the Enemy Act* or the *International Emergency Economic Powers Act*, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.
- (b) Neither the Borrower nor any Subsidiary (i) is a person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in the Anti Terrorism Order or (ii) engages in any dealings or transactions, or is or will be otherwise associated, with any such person. The Borrower and its Subsidiaries are in compliance, in all material respects, with the USA Patriot Act.
- (c) No part of the proceeds from any Advance hereunder will be used for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, assuming in all cases that such Act applies to the Borrower.

11.1.16 *Statutes under Certain Statutes.* Neither the Borrower nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, Public Utility Holding Company Act of 1935, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

11.1.17 *Environmental Matters.*

- (a) Neither the Borrower nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against the Borrower or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the Environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.
- (b) Neither the Borrower nor any Subsidiary has knowledge of any facts which would give rise to any claim, public or private, or violation of Environmental Laws or damage to the Environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

- (c) Neither the Borrower nor any Subsidiary has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that could reasonably be expected to result in a Material Adverse Effect.
- (d) All buildings on all real properties now owned, leased or operated by the Borrower or any Subsidiary are in Material compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

11.1.18 *Solvency.*

- (a) Assets Greater Than Liabilities. The fair value of the business and assets of the Borrower and its Subsidiaries, taken as a whole on a consolidated basis, exceeds, as of, and immediately after giving effect to each Borrowing on each Borrowing Date, the liabilities (excluding Subordinated Debt) of the Borrower and its Subsidiaries (excluding Subordinated Debt), taken as a whole on a consolidated basis, as of such time.
- (b) Meeting Liabilities. Immediately after giving effect to each Borrowing on each Borrowing Date, no Obligor will be unable to pay its debts as such debts mature.
- (c) Intent. No Obligor is entering into any of this Agreement and the other Loan Documents to which it is a party with any intent to hinder, delay, or defraud either current creditors or future creditors of such Obligor or others.

11.1.19 *Ranking of Creditors.* The Borrower's obligations under the Loan Documents will rank at least *pari passu* with all of its other outstanding unsubordinated, unsecured Debt. Each Guarantor's obligations under its Guarantee will rank at least *pari passu* with all of such Guarantor's other outstanding unsubordinated, unsecured Debt.

11.1.20 *Fees.* No Obligor nor any of its Affiliates has paid or agreed to pay any fees or other consideration, or given any additional security or collateral, or shortened the maturity or average life of any indebtedness or permanently reduced any borrowing capacity, in each case, in favour of or for the benefit for any creditor of the Obligors, in connection with the obtaining of any consents or approvals in connection with the transactions contemplated hereby.

11.1.21 *Change in Control.* If the Borrower proposes to take any action that the Borrower reasonably believes will result in the consummation of a Change in Control, the Borrower will at least 20 and not more than 60 days prior to the taking of such action give written notice thereof to the Agent.

11.1.22 *Insurance.* The Borrower maintains insurance for itself and its Subsidiaries with financially responsible insurance companies in such amounts and against such risks as is usually carried by owners of similar assets in the same general areas in which the Borrower and its Subsidiaries operate, including comprehensive property damage insurance, automobile liability

insurance for bodily injury and property damage, comprehensive general liability insurance and workers compensation insurance.

To the extent that the representations and warranties made in this Section 11.1 apply to any ARS Entity or their respective assets and any fact, circumstance, event, state or condition in relation thereto that occurred or existed prior to the ARS Transactions Closing Date, such representations and warranties are made to the knowledge of the Borrower based solely on the due diligence review conducted by the Borrower in respect of the ARS Entities, including those matters disclosed in the Merger Agreement and the disclosure schedules thereto.

11.2 Repetition of Representations and Warranties

The representations and warranties made in Section 11.1 shall be deemed to be repeated by the Borrower on each Borrowing Date by reference to the facts and circumstances then existing, it being understood that to the extent such representations and warranties relate solely to a specifically identified earlier date they need only be true and correct as of such earlier date, and subject to any changes thereto resulting from any actions expressly permitted under Article 12 or from any waiver of non-compliance therewith in writing from the Agent.

11.3 Nature of Representations and Warranties

The representations and warranties made in Section 11.1 or deemed repeated in Section 11.2 shall survive the execution and delivery of this Agreement and the making of each Borrowing notwithstanding any investigations or examinations which may be made by or on behalf of the Finance Parties or Lenders' Counsel, and the Finance Parties shall be deemed to have relied on such representations and warranties in the making of each Borrowing.

ARTICLE 12 COVENANTS OF THE BORROWER

12.1 Affirmative Covenants

Until Payment in Full of all Loan Obligations owing by the Borrower to each of the Finance Parties, the Borrower agrees with the Finance Parties that it will, and (to the extent the context so admits) it will cause each Subsidiary to, duly perform and comply with, each of the following affirmative covenants (except to the extent waived by the Required Lenders):

12.1.1 *Compliance with Law.* The Borrower will, and will cause each of its Subsidiaries to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including ERISA, the USA Patriot Act and Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

12.1.2 *Insurance.* The Borrower will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co insurance and self insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated unless failure to maintain such insurance could not reasonably be expected to have a Material Adverse Effect.

12.1.3 *Maintenance of Properties.* The Borrower will, and will cause each of its Subsidiaries to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, provided that this Section shall not prevent the Borrower or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Borrower has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

12.1.4 *Payment of Taxes and Claims.* The Borrower will, and will cause each of its Subsidiaries to, timely file with the appropriate Governmental Authority all tax returns required to be filed in any jurisdiction (which tax returns will in all material respects be true, correct and complete and prepared in accordance with applicable law) and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Borrower or any Subsidiary, provided that neither the Borrower nor any Subsidiary need pay any such tax or assessment or claims if (i) the amount, applicability or validity thereof is contested by the Borrower or such Subsidiary on a timely basis in good faith and in appropriate proceedings and in accordance with applicable law need not be paid until the resolution of such proceedings, and the Borrower or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Borrower or such Subsidiary or (ii) the nonpayment of all such taxes, assessments and claims in the aggregate could not reasonably be expected to have a Material Adverse Effect.

12.1.5 *Corporate Existence, etc.* Subject to Subsection 12.2.2, the Borrower will at all times preserve and keep in full force and effect its corporate existence. Subject to Subsections 12.2.2 and 12.2.4, the Borrower will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Borrower or a Wholly-Owned Subsidiary in compliance with each of the other provisions of this Agreement) and all rights and franchises of the Borrower and its Subsidiaries unless, in the good faith judgment of the Borrower, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect. The Borrower and each of its Subsidiaries shall comply with the terms of each agreement and instrument to which it is a party or by which it is bound, and any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority in each case to the extent necessary to ensure that non-compliance with such agreement, instrument, order,

judgment, decree or ruling could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

12.1.6 *Loan Obligations to Rank Pari Passu.* The Loan Obligations of each Obligor are, and at all times shall remain, direct and unsubordinated obligations of such Obligor ranking *pari passu* with all other unsecured unsubordinated Debt of such Obligor.

12.1.7 *Subsequent Obligors.*

- (a) Subsidiaries. Subject to the last two sentences of this Paragraph (a), the Borrower will, on or before the first to occur of (i) 90 days from the date a person becomes a Subsidiary, (ii) the end of the Fiscal Year in which such person becomes a Subsidiary or (iii) the first date on which such Subsidiary incurs Debt after becoming a Subsidiary, either (A) cause such Subsidiary to provide to the Agent the Guarantee and legal opinions described in Subsection 12.1.7(c) or (B) subject to Section 12.2, amalgamate, merge or consolidate such Subsidiary with or into the Borrower or a Wholly-Owned Subsidiary; provided that (1) the Borrower or such Wholly-Owned Subsidiary, as applicable, shall be the surviving or continuing entity, (2) any equity interests or voting interests not owned by the Borrower or such Wholly-Owned Subsidiary in such Subsidiary prior to such amalgamation, merger or consolidation shall be eliminated as a result of such amalgamation, merger or consolidation) and (3) if any ARS Entity amalgamates, merges or otherwise consolidates with the Borrower or any Wholly-Owned Subsidiary of the Borrower that is not an ARS Entity, any equity or voting interests not owned by the Borrower or such a Wholly-Owned Subsidiary shall be eliminated on such amalgamation, merger or consolidation. The requirements of this Section 12.1.7 shall not apply to Subsidiaries which, in the aggregate, constitute and remain Immaterial Subsidiaries. In the case of any Subsidiary, which, at the time of acquisition has outstanding Debt which is permitted hereunder but which does not constitute Debt secured by Liens described in and permitted by Clause (i) of the definition of "Permitted Liens", the reference in Clause (i) above to "90 days" shall be deemed to be "five (5) days".
- (b) Affiliate Guarantors. The Borrower covenants that if any Affiliate (other than a Subsidiary which is governed by Subsection 12.1.7(a)) shall enter into a Guarantee in respect of any other Debt of the Borrower, or otherwise become directly or indirectly liable for, all or any part of the Debt under, or in respect of, any other Debt, then the Borrower will cause each such Affiliate within five (5) Business Days after such Affiliate entered into any such Guarantee or becoming directly or indirectly liable in respect of such Debt, to provide to the Agent the Guarantee and legal opinion described in Subsection 12.1.7(c) below.
- (c) Opinions. The Borrower covenants that any Subsidiary or Affiliate of the Borrower required by Subsection 12.1.7(a) or (b) to provide the Guarantee and legal opinion set out in this Subsection 12.1.7(c), shall (i) execute and deliver in favour of the Finance Parties a Guarantee of the Finance Obligations reasonably satisfactory in form and substance to the Required Lenders, and (ii) provide to the Finance Parties a legal opinion of independent counsel for such person with

respect to such Guarantee, which counsel and opinion shall be reasonably acceptable to the Required Lenders and if the ARS Transactions Closing Date has occurred, not materially broader in scope than the corresponding opinions delivered on the ARS Transactions Closing Date with respect to the Guarantee of the ARS Entities.

12.1.8 *Further Assurances.* Each of the Obligors, at its own cost and expense, upon request of the Required Lenders or the Agent, shall execute and deliver or cause to be executed and delivered to the Agent such further instruments and due and cause to be done such further acts that may be necessary or proper in the reasonable opinion of the Agent to carry out more effectually the provisions and purposes of the Loan Documents.

12.1.9 *Books and Records.* The Borrower will, and will cause each of its Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Borrower, or such Subsidiary, as the case may be.

12.1.10 *Maintenance of Volume to Utilize Corporate Cap.* The Borrower will use its commercially reasonable efforts to maintain its relationships with physicians, medical clinics and other users of laboratory testing services so as to maintain the demand for its services in a manner that fully utilizes the Corporate Cap of the Borrower and its Subsidiaries on a combined basis.

12.1.11 *Ministry of Health and Long Term Care Letter.* On or before the Initial Closing Date or within 45 days thereafter, the Borrower will deliver a letter from the Ministry of Health and Long Term Care, reasonably satisfactory to the Lenders, confirming that a Default or Event of Default under this Agreement would not in and of itself result in the revocation of any licenses issued under the *Laboratory and Specimen Collection Centre Licensing Act*.

12.1.12 *Financial and Business Information.* The Borrower shall deliver or cause to be delivered to the Agent:

- (a) as soon as practicable and in any event within 60 days after the end of each Fiscal Quarter in each Fiscal Year of the Borrower (other than the last Fiscal Quarter of each such Fiscal Year), duplicate copies of:
 - (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Quarter; and
 - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries, for such Fiscal Quarter and (in the case of the second and third Fiscal Quarters) for the portion of the Fiscal Year ending with such Fiscal Quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous Fiscal Year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Responsible Officer as fairly presenting, in all material respects, the

financial position of the entities being reported on and their results of operations and cash flows, subject to changes resulting from year end adjustments;

- (b) as soon as practicable and in any event within 120 days after the end of each Fiscal Year of the Borrower, duplicate copies of:
 - (i) a consolidated balance sheet of the Borrower and its Subsidiaries, as at the end of such Fiscal Year, and
 - (ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Borrower and its Subsidiaries, for such Fiscal Year,

setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of the Auditors, which opinion shall state that such financial statements present fairly, in all material respects, the consolidated financial position of the entities being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such Auditors in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances;

- (c) as soon as practicable and in any event within 120 days after the end of the 2010 Fiscal Year of the Fund, duplicate copies of:
 - (i) a consolidated balance sheet of the Fund as at the end of such Fiscal Year, and
 - (ii) consolidated statements of income, changes in unitholders' equity and cash flow of the Fund, for such Fiscal Year,

setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of the Auditors, which opinion shall state that such financial statements present fairly, in all material respects, the consolidated financial position of the entities being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such Auditors in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances; provided that, the delivery within the time period specified above of the Fund's annual audited financial statements for such Fiscal Year prepared in accordance with the requirements therefor and filed with the Ontario Securities Commission shall be deemed to satisfy the requirements of this Subsection 12.1.12(c);

- (d) promptly upon their becoming available one (1) copy of (i) each financial statement, report, notice or proxy statement sent by the Borrower or any Subsidiary of the Borrower to public securities holders generally, and (ii) each regular or periodic report (including regulatory reports), each registration statement (without exhibits except as expressly requested by such holder), each prospectus and all amendments thereto filed by the Borrower or any Subsidiary of the Borrower with the Ontario Securities Commission or the Securities and Exchange Commission or any successor agency to any of the foregoing, or any other Canadian, United States Federal, state or provincial securities or regulatory authority or with any United States or Canadian stock exchange and all press releases and other statements made available generally by the Borrower or any Subsidiary of the Borrower to the public concerning developments that are Material; provided that for the purposes of this Clause (c), publication on www.sedar.com shall constitute delivery to the Agent;
- (e) as soon as practicable and in any event within 60 days of the end of each Fiscal Quarter, a Compliance Certificate from the Borrower prepared as at such Fiscal Quarter end;
- (f) as soon as practicable, and in any event within 120 days after the end of each Fiscal Year of the Borrower commencing after the December 31, 2008 Fiscal Year of the Borrower, an annual operating budget for the Borrower and its Subsidiaries which includes a projected income statement, a projected balance sheet, cash flow projections, a statement of material assumptions and an explanation and analysis from management;
- (g) as soon as it obtains knowledge of any Default, notice of such Default, together with an outline in reasonable detail of the action it is taking to remedy such Default;
- (h) as soon as it obtains knowledge of any Material Adverse Effect, notice of such Material Adverse Effect, together with an outline in reasonable detail of the action it is taking to remedy such Material Adverse Effect;
- (i) as soon as it obtains knowledge of any breach of any Material Authorization, notice of such breach, together with an outline in reasonable detail of the action it is taking to remedy such breach and the effects thereof;
- (j) as soon as it obtains knowledge of any award, order or judgment or the commencement of any suit, action, proceeding or dispute affecting the Borrower or any of its Subsidiaries or any of their respective assets which, either alone or when aggregated with all other such suits, actions or proceedings, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect, together in each case with an outline in reasonable detail of the particulars thereof, copies of all pleadings, Borrower's Counsel's assessment of the merits thereof and the action the Borrower or any of its Subsidiaries is taking in respect thereof; and

- (k) from time to time, such additional information regarding any of the business affairs of the Borrower or any of its Subsidiaries or the Agent may reasonably request.

12.1.13 *In surance.* The Borrower shall at all times maintain the insurance referred to in Subsection 11.1.22.

12.2 Negative Covenants

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

12.2.1 *Transactions with Affiliates.* The Borrower will not and will not permit any Subsidiary to enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Borrower or another Subsidiary), except in the ordinary course and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favourable to the Borrower or such Subsidiary than would be obtainable in a comparable arm's length transaction with a person not an Affiliate.

12.2.2 *Merger, Amalgamation, Consolidation, etc.* The Borrower will not, and will not permit any Subsidiary to, consolidate with or merge with any other person or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any person unless:

- (a) in the case of any such transaction involving an Obligor, other than the ARS Transactions contemplated to take place on the ARS Transactions Closing Date, the successor formed by such consolidation or the survivor of such merger or the person that acquires by conveyance, transfer or lease substantially all of the assets of the Borrower as an entirety, as the case may be, shall be a solvent corporation or limited liability company organized and existing under the laws of Canada or any province thereof, of the United States or any State of the continental United States (including the District of Columbia) or of the United Kingdom and, if such Obligor is not such corporation or limited liability company, (i) such corporation or limited liability company shall have executed and delivered to each applicable Finance Party its assumption of the due and punctual performance and observance of each covenant and condition of each respective Loan Document by which such Obligor was bound and (ii) shall have caused to be delivered to each applicable Finance Party an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Lenders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof;
- (b) in the case of the ARS Transactions, such ARS Transactions take place on the ARS Transactions Closing Date;

- (c) in the case of any such transactions involving a Subsidiary and not an Obligor, other than ARS Transactions contemplated to take place on the ARS Transactions Closing Date, the successor formed by such consolidation or the survivor of such merger or the person that acquires by conveyance, transfer or lease substantially all of the assets of such Subsidiary as an entirety, as the case may be, shall be a Subsidiary organized and existing under the laws of Canada or any province thereof, of the United States or of any State of the continental United States (including the District of Columbia); and
- (d) in all cases, immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of an Obligor shall have the effect of releasing such Obligor or any successor corporation that shall theretofore have become such in the manner prescribed in this Subsection 12.2.2 from its liability under the Loan Documents.

12.2.3 *Liens.* The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any such Subsidiary, whether now owned or held or hereafter acquired, or any income or profits therefrom, except Permitted Liens.

12.2.4 *Sale of Assets, etc.* The Borrower will not, and will not permit any of its Subsidiaries to, make any Asset Disposition except for any Asset Disposition that forms part of the ARS Forward Transactions or unless:

- (a) such Asset Disposition is made to a person that is not an Affiliate and is dealing at arms length with the Borrower (except as provided in the last sentence of this Subsection 12.2.4) and, in the good faith opinion of the Borrower or Subsidiary making the Asset Disposition, the Asset Disposition is in exchange for consideration having a fair market value at least equal to that of the property exchanged;
- (b) before and immediately after giving effect to the Asset Disposition, no Default or Event of Default would exist; and
- (c) the sum of (i) the Disposition Value of the property subject to such Asset Disposition, plus (ii) the aggregate Disposition Value for all other property that was the subject of an Asset Disposition during the period of 365 days immediately preceding the date of such Asset Disposition, would not exceed 15% of Total Assets (determined as of the end of the most recently ended Fiscal Quarter preceding the date of such Asset Disposition).

To the extent that the Net Proceeds Amount consisting of cash for any Asset Disposition is applied to a Property Reinvestment Application within twelve months after such Asset Disposition, then such Asset Disposition (or, if less than all such Net Proceeds Amount is

applied as contemplated hereinabove, the *pro rata* percentage thereof which corresponds to the Net Proceeds Amount so applied), only for the purpose of determining compliance with subsection (c) of this Subsection 12.2.4 as of any date, shall be deemed not to be an Asset Disposition. In addition, the Borrower and any Subsidiary may make any Asset Disposition to any Obligor; provided that, before and immediately after giving effect to the Asset Disposition, no Default or Event of Default would exist.

12.2.5 *Nature of Business; Organizational Structure.* The Borrower will not and will not permit any of its Subsidiaries to, (a) engage in any business if, as a result, when taken as a whole, the general nature of the businesses in which the Borrower and the Subsidiaries are engaged would be substantially changed from a general nature of the business in which the Borrower and the Subsidiaries are engaged in on the date of this Agreement or (b) change the organizational structure and/or ownership of Capital Stock of any of the Borrower and its Subsidiaries from that set forth in Schedule 5, except as permitted by Subsection 12.2.2.

12.2.6 *Ownership of Borrower and Guarantors.* The Borrower will ensure that each Guarantor (other than any Subsidiary that is not initially acquired, directly or indirectly, as a Wholly-Owned Subsidiary of the Borrower) remains at all times a Wholly-Owned Subsidiary of the Borrower.

12.2.7 *Restricted Payments.*

- (a) The Borrower will not, and will not permit any of its Subsidiaries to, declare or pay any Dividend or make any Distribution on its Capital Stock or otherwise return any capital to its shareholders or other equity holders except for:
 - (i) any Dividend paid by the Borrower; provided that, the total aggregate amount of all Dividends by the Borrower during any Test Period does not exceed Distributable Cash Flow for that period;
 - (ii) any Dividend or Distribution made by a Wholly-Owned Subsidiary of the Borrower or by either Chesapeake or Calvert to the Borrower or another Wholly-Owned Subsidiary of the Borrower;
 - (iii) any Dividend paid by a non-Wholly-Owned Subsidiary to holders of its Capital Stock ratably in accordance with their respective holdings of its Capital Stock;
 - (iv) any Dividend or Distribution made by an ARS Entity as part of the ARS Forward Transactions;
 - (v) any Dividend or Distribution or purchase or repurchase of Capital Stock of CML US Holdings made by any Wholly-Owned Subsidiary of American Radiology Services LLC or by either Chesapeake or Calvert to American Radiology Services LLC or another Wholly-Owned Subsidiary of American Radiology Services LLC; and

- (vi) any Distribution made by way of the issuance by the Borrower or any Subsidiary of the Borrower of its Capital Stock to holders of its Capital Stock rateably in accordance with their respective holdings of its Capital Stock;

provided that, no such Dividend or Distribution shall be paid or made if either (i) any Default or Event of Default has occurred and is continuing or (ii) any of the foregoing would result in the occurrence of any Default or Event of Default.

For the purposes of this Section 12.2.7(a), “**Distributable Cash Flow**” in relation to any Test Period means the amount determined by the Borrower and notified to the Agent to be the Standardized Distributable Cash for that Test Period adjusted by:

- (i) adding or deducting certain adjustments relating to non-cash working capital items that are known and predictable in nature;
- (ii) adding or deducting any notional capital expenditure reserve adjustment determined to be to be reasonable and necessary for the continuing operation of the Borrower;
- (iii) certain adjustments for non-recurring revenues, if applicable, for that Test Period; and
- (iv) certain adjustments for discretionary or non-operating expenditures or non-recurring items, funded out of the cash balance available at the beginning of that Test Period and not funded by current periodic cash flow, if applicable, for that Test Period.

In addition, for the purposes of this Section 12.2.7(a), “**Standardized Distributable Cash**” for a Test Period means the periodic cash flows from the Borrower's operating activities as reported in the financial statements of the Borrower that have been prepared in conformity with GAAP for the period corresponding to that Test Period including the effects of changes in non-cash working capital, less adjustments for (i) total capital expenditures as reported in the financial statements of the Borrower that have been prepared in conformity with GAAP for the period corresponding to that Test Period; and (ii) restrictions on distributions arising from compliance with financial covenants restrictive as at the date of calculation of the Standardized Distributable Cash and limitations arising from the existence of a minority interest in a Subsidiary.

- (b) The Borrower will not, and will not permit any of its Subsidiaries to, in addition to any restrictions applicable to the Subordinated Debt, upon the occurrence of a Default or Event of Default which is continuing, make any payments whatsoever under, arising out of or relating to the Subordinated Debt including any payments of interest in respect thereof until such time as each such Default or Event of Default has been cured.

12.2.8 *Limitations on Debt.* In addition to, and not in limitation of, any other restrictions in respect of Debt of the Borrower or any Subsidiary hereunder, the Borrower will not, and will not permit any Subsidiary to, create, issue, assume, Guarantee or otherwise incur or in any manner become liable in respect of any Debt, except for:

- (a) the Finance Obligations;
- (b) Pari Passu Debt;
- (c) Subordinated Debt between the Borrower and any Subsidiary or between any Subsidiary of the Borrower and any other Subsidiary;
- (d) Out-of-the Money Derivative Exposure owing to a Lender;
- (e) Debt secured by any Lien described in paragraph (i) of the definition of Permitted Liens;
- (f) unsecured Debt incurred by any Subsidiary to fund working capital requirements in an aggregate total amount outstanding for all Subsidiaries not to exceed CAD10,000,000 or the Equivalent Amount in foreign currency;
- (g) existing unsecured Debt owing by any ARS Entities to certain individuals, not exceeding USD5,000,000 in the aggregate; or
- (h) other unsecured Debt not otherwise permitted under Clauses (a) to (g) inclusive on terms and conditions satisfactory to the Required Lenders acting reasonably;

provided that, at the time of any such creation, issuance, assumption, Guarantee, incurrence or otherwise becoming liable, or immediately after giving effect thereto and to the application of the proceeds thereof, no Default or Event of Default exists or would exist.

12.2.9 *Investments.* The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, make any loans or advances to, or investments in, any other person except:

- (a) loans, investments or advances made by the Borrower or its Subsidiaries in respect of a Permitted Acquisition;
- (b) loans, investments or advances made by the Borrower or its Subsidiaries in any Guarantor that is a Subsidiary of the Borrower;

- (c) loans and investments or advances made by the Borrower or its Subsidiaries comprised in the ARS Transactions which take place on the ARS Transactions Closing Date; or
- (d) any other loans, investments or advances which, on the date such loans, investments or advances is made, would not result in the aggregate book value of all loans, investments or advances of the Borrower and its Subsidiaries not otherwise permitted under Clauses (a), (b) and (c) above to exceed 10% of Total Assets of the Borrower and its Subsidiaries on the date of such loans, investments or advances (before giving effect to any increase in Total Assets of the Borrower and its Subsidiaries as a result of such loans, investments or advances).

12.2.10A *Acquisitions.* Neither the Borrower nor any Subsidiary will make any Acquisition, except for a Permitted Acquisition.

12.2.11 *Subordinated Debt.* The Borrower will not, and will not permit any of its Subsidiaries to, make any amendments to any agreement or instrument evidencing Subordinated Debt with respect to the subordination provisions relating to the Subordinated Debt.

12.2.12 *Use of Proceeds.* The Borrower will not, and will not permit any of its Subsidiaries, to use the proceeds of any Advance (a) to finance, in whole or in part, any Hostile Take-Over-Bid or (b) for any purpose not provided for in Section 2.1 or 4.1 or Subsection 3.1.1, as applicable.

12.2.13 *Rents.* Neither the Borrower nor any Subsidiary will become obligated to pay Rent if the aggregate Rents payable by the Borrower on a consolidated basis during any Test Period would exceed CAD40,000,000 (or the Equivalent Amount in foreign currency). For the purpose of this Subsection 12.2.13, "**Rents**" means amounts payable under operating leases or other agreements granting the right to use any property of another which do not constitute Debt.

12.2.14 *Sale/Leaseback Transactions.* Neither the Borrower nor any Subsidiary will enter into any Sale/Leaseback Transaction if the aggregate fair market value of all assets of the Borrower and its Subsidiaries subject to Sale/Leaseback Transactions at any time would exceed CAD15,000,000 (or the Equivalent Amount in foreign currency).

12.2.15 *Derivatives.* Neither the Borrower nor any Subsidiary will enter into any Derivative except for the purpose of paying or hedging its actual or anticipated normal business capital expenditures and operating revenues and expenses or hedging its interest rate or currency exposure on its Debt.

12.3 Financial Covenants

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

12.3.1 *Leverage Ratio.* The Borrower will not, as of the last day of its most recently completed Fiscal Quarter, permit the Leverage Ratio to be greater than 3.0 to 1.0.

12.3.2 *Interest Coverage Ratio.* The Borrower will not, as of the last day of its most recently completed Fiscal Quarter, permit the Interest Coverage Ratio to be less than 4.0 to 1.0.

For the purposes of computing the Leverage Ratio and the Interest Coverage Ratio for any Test Period, the portion of EBITDA of the Borrower for that Test Period attributable to all Subsidiaries that are neither Wholly-Owned Subsidiaries of the Borrower nor Guarantors in excess of 15% of such EBITDA shall be disregarded and not included in such EBITDA.

ARTICLE 13 EVENTS OF DEFAULT

13.1 Events of Default

An "Event of Default" shall exist if any of the following conditions or events shall occur and be continuing:

- (a) the Borrower defaults in the payment to any Lender of any principal amount when the same becomes due and payable hereunder, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or
- (b) the Borrower defaults in the payment of any interest, Fee or other amount (excluding principal) payable hereunder or under any other Loan Document for more than five (5) Business Days after the same becomes due and payable; or
- (c) the Borrower defaults in the performance of or compliance with any term contained in Section 12.3; or
- (d) any Obligor defaults in the performance of or compliance with any term contained herein or any other Loan Document (other than those referred to in paragraphs (a), (b) and (c) of this Section 13.1) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Borrower receiving written notice of such default from any Finance Party (any such written notice to be identified as a "notice of default" and to refer specifically to this Section 13.1(d)); or
- (e) any representation or warranty made in writing by or on behalf of any Obligor or by any officer of an Obligor in any Loan Document or in any writing furnished in connection with the transactions contemplated hereby or thereby proves to have been false or incorrect in any Material respect on the date as of which made; or
- (f) (i) the Borrower or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make - whole amount or interest on any Debt that is outstanding in an aggregate principal amount of at least \$3,000,000 (or its Equivalent Amount in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (ii) the Borrower or any Subsidiary is in default in the performance of or compliance with

any term of any evidence of any Debt in an aggregate outstanding principal amount of at least \$3,000,000 (or its Equivalent Amount in the relevant currency of payment) or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Debt has become, or has been declared due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Debt to convert such Debt into equity interests), (x) the Borrower or any Subsidiary has become obligated to purchase or repay Debt before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least \$3,000,000 (or its Equivalent Amount), or (y) one or more persons have the right to require the Borrower or any of its Subsidiaries so to purchase or repay such Debt; or

- (g) any Loan Documents shall cease to be a legal, valid and binding agreement enforceable against the Obligor thereunder, in accordance with the respective terms thereof or shall in any way be terminated or become or be declared ineffective or inoperative or shall cease to give or provide the respective rights, titles, interest, remedies, powers or privileges intended to be created thereby including, without limitation, a determination by any Governmental Authority or court that such Loan Document is invalid, void or unenforceable in any material respect or any party thereto shall contest or deny the validity or enforceability of any of its obligations under such Loan Document; or
- (h) the Borrower or any of its Subsidiaries (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, including, without limitation, any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any relief under the *Companies' Creditors Arrangement Act* (Canada), (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or
- (i) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Borrower or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of the Borrower or any of its Subsidiaries, or any such petition shall be

filed against the Borrower or any of its Subsidiaries and such petition shall not be dismissed within 60 days; or

- (j) any event occurs with respect to the Borrower or any of its Subsidiaries which under the laws of any jurisdiction is analogous to any of the events described in paragraph (h) or (i) above, provided that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in paragraph (h) or (i) above; or
- (k) a final judgment or judgments for the payment of money aggregating in excess of \$3,000,000 are rendered against one or more of the Borrower and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or
- (l) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been filed with the PBGC or the PBGC shall have instituted proceedings under ERISA Section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Borrower or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of Section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$10,000,000, (iv) the Borrower or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Borrower or any ERISA Affiliate withdraws from any Multiemployer Plan, (vi) the Borrower or any of its Subsidiaries fails to administer or maintain a Non U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non U.S. Plan is involuntarily terminated or wound up or (vii) the Borrower or any ERISA Affiliate becomes subject to the imposition of a Material financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non U.S. Plans; but only if any such event or events described in Clauses (i) through (vii) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect;
- (m) if, without the consent of the Required Lenders a Change in Control occurs; or
- (n) a Material Adverse Effect occurs.

13.2 Termination and Acceleration

Upon the occurrence of an Event of Default, the Agent may (or, subject to Section 14.8, at the direction of the Required Lenders shall) do any one or more of the following:

- (a) declare the whole or any item or part of the Total Commitment or any unutilized portion of any Credit Facility to be cancelled, terminated or reduced, whereupon the Lenders (to the extent applicable) shall not be required to make any further Borrowing available hereunder in respect of such portion of the Total Commitment or each Credit Facility cancelled, terminated or reduced;
- (b) accelerate the maturity of all or any item or part of the Loan Obligations of the Borrower hereunder and declare them to be payable on demand or immediately due and payable, whereupon they shall be so accelerated and become so due and payable;
- (c) suspend any rights of the Borrower under any Loan Document, whereupon such rights shall be so suspended;
- (d) demand payment under any Guarantee;
- (e) demand that the Borrower pay (i) the Credit Amount of all outstanding Acceptances in prepayment of (or at the option of each Lender, as cash collateral for) its obligations under Section 5.7 in respect of outstanding Acceptances and (iii) the maximum amounts remaining to be drawn upon under all outstanding Standby Instruments in prepayment of (or, at the option of the Issuing Bank, as cash collateral for) its obligations under Subsection 7.4.2 in respect thereof, whereupon the Borrower shall be obliged to (A) prepay immediately to the Agent for the account of the Lenders entitled thereto the Credit Amount of all outstanding Acceptances, and (B) pay immediately to the Agent for the account of the Issuing Bank such maximum amounts of such Standby Instruments until they expire or are drawn upon, whereupon the Issuing Bank shall account to the Borrower and remit any overpayment to the Agent for application in accordance with Section 14.25; or
- (f) take any other action, commence and prosecute any proceeding or exercise such other rights as may be permitted by applicable law (whether or not provided for in any Loan Document) at such times and in such manner as the Agent may consider expedient,

all without any additional notice, demand, presentment for payment, protest, noting of protest, dishonour, notice of dishonour or any other action being required. If an Event of Default referred to in (h) or (i) occurs, unless the Required Lenders otherwise agree, the Total Commitment shall be immediately cancelled and the Loan Obligations shall be accelerated and become immediately due and payable automatically without any action on the part of any Finance Party being required.

13.3 Waiver

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

13.4 Protection of Agent

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

ARTICLE 14 THE AGENT AND THE ADMINISTRATION OF THE CREDIT FACILITIES

14.1 Appointment and Authorization

Each Lender irrevocably appoints and authorizes the Agent to execute, deliver and take such actions as its agent under each Loan Document to which the Agent is party and to exercise such rights under each such Loan Document as are specifically delegated to the Agent by the terms thereof, together with such rights as are reasonably incidental thereto. The Agent accepts such appointment and agrees to perform its obligations as such Agent under each such Loan Document in accordance with the provisions thereof and hereof.

14.2 Declaration of Agency

The Agent declares that it shall hold the rights entrusted to it under each Loan Document for its own benefit and as agent for the rateable benefit of each Lender. The rights vested in the Agent by any Loan Document shall be performed by the Agent in accordance with this Article 14.

14.3 Interest Holders

The Agent may treat each Lender as the holder of all of the rights of such Lender in respect of the Credit Facilities until a duly executed and delivered Loan Transfer Agreement signed by such Lender and the Transferee, completed in form and substance satisfactory to the Agent, has been delivered to the Agent and the Agent has been paid its required processing fee

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

14.4 Consultation with Professionals

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

14.5 Documents

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

14.6 The Agent and its Subsidiaries and Affiliates

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

14.7 Responsibility of the Agent. The obligations of the Agent to the Lenders under each Loan Document to which the Agent is party are only those expressly set forth in such Loan Documents, subject as otherwise provided in this Article 14. The Agent shall not have any fiduciary obligation to any Lender. The Agent shall only have those contractual obligations expressly set forth in each Loan Document to which the Agent is party. The Agent shall not have any duty or obligation to investigate whether any Default has occurred. The Agent shall be entitled to assume that no Default has occurred and is continuing, unless any officer of the Agent charged with the administration of the Loan Documents has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Lender that such Lender considers that a Default has occurred and is continuing, such notification to specify in detail the nature thereof.

14.8 Action by the Agent

14.8.1 *Exercise of Discretion.* The Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, and with respect to taking or refraining from taking any action which it may be able to take under or in respect of, any Loan Document, unless the Agent has been instructed by the Required Lenders to exercise such rights or to take or refrain from taking such action; provided, however, that the Agent shall not release or postpone, or agree to release or postpone, any Guarantee, without the consent of all the Lenders, except to the extent expressly permitted to do so under Subsection 14.17.2(h). The Agent shall not incur any obligations under or in respect of any Loan Document with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except to the extent of any losses and expenses that are determined by a Final Judgment to have directly resulted from the gross negligence or wilful misconduct of the Agent.

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

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

14.8.4 *Litigation.* The Agent shall have the right to institute, prosecute and defend any litigation affecting the Agent, any rights of the Finance Parties under the Loan Documents and, subject to Section 14.17, to compromise any matter or difference or submit any such matter or difference to arbitration and to compromise or compound any debts owing to the Agent as agent or any other claims against it as such agent upon being provided with such evidence as shall seem sufficient to the Agent.

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

14.8.6 *Agent May Require Security.* Notwithstanding Subsection 14.8.1, the Agent may refrain from acting in accordance with any instructions of the Required Lenders to begin any proceeding arising out of or in connection with any Loan Document until it has received such security as it may require (whether by way of payment in advance or otherwise) for all losses and expenses and disbursements which it anticipates it will or may expend or incur in complying with such instructions.

14.8.7 *Standard of Promptness.* Where the Agent is obliged by the provisions of this Article 14 to give any notice or notification “promptly” or “forthwith”, if it gives such notice or notification within two (2) Business Days of an officer of it charged with the administration of this Agreement becoming aware of the subject matter of such notice or notification, it shall be deemed to have given such notice or notification promptly or forthwith.

14.9 Notice of Events of Default

In the event that an officer of the Agent charged with the administration of this Agreement is notified of any Event of Default, the Agent shall promptly notify the Lenders, and, subject to Section 14.8, the Agent shall take such action and assert such rights under the Loan Documents as the Required Lenders shall request in writing, and the Agent shall not be subject to any liability by reason of its acting pursuant to any such request. Prior to receiving any instructions from the Required Lenders in respect of such Event of Default, the Agent may, but shall not be obliged to, take such action or assert such rights (other than those matters requiring unanimous Lender consent under any other provision of this Agreement) as it deems in its discretion to be advisable for the protection of the Finance Parties, except that, if the Required Lenders have instructed the Agent not to take such action or assert such rights, the Agent shall not, except as otherwise provided in Subsections 14.8.3 and 14.8.6, act contrary to those instructions.

14.10 Responsibility Disclaimed

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

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

14.11 Indemnification

14.11.1 *Lenders to Indemnify Agent.* Each of the Lenders severally agrees to indemnify the Agent (to the extent not paid by the Borrower or any of its Subsidiaries to the Agent on demand) *pro rata* according to their respective Total Exposures from and against any and all claims, losses and expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of any Finance Document or any other agreement or document contemplated thereby or any action taken or omitted by the Agent under any Loan Document or any agreement or document contemplated thereby, except that no Lender shall be liable to the Agent for any portion of such claims, losses and expenses or disbursements to the extent they are determined by a Final Judgment to have directly resulted from the gross negligence or wilful misconduct of the Agent. Payment by the Lenders to the Agent pursuant to this Subsection 14.11.1 shall not discharge or satisfy any obligation of any Obligor to make such payment to the Agent, but rather the Lenders making such payment shall be subrogated to the rights of the Agent against such Obligor.

14.11.2 *Agent May Indemnify Itself.* The Agent may indemnify itself out of any funds received by the Agent pursuant to Section 14.19, against all of the claims, losses and expenses or disbursements suffered or incurred by the Agent in connection with any matter or thing done or omitted to be done in any way relating to any Loan Document, except for any portion of such claims, losses and expenses or disbursements to the extent they are determined by a Final Judgment to have directly resulted from the gross negligence or wilful misconduct of the Agent.

14.12 Protection of representatives

Each reference in Sections 14.1, 14.3, 14.8, 14.9, 14.10, 14.11, 14.14 and 14.19 to the Agent shall (to the extent the context so admits) be deemed to include the Agent and its representatives and the Agent shall be constituted as agent and bare trustee of each such representative and shall hold and enforce their rights under those Sections for their respective benefits.

14.13 Credit Decision

Each Lender represents and warrants to the Agent that:

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

14.14 Replacement of Agent, Reference Lender and Swing Line Lender

14.14.1A *gents.* The Agent (a “Resigning Agent”) may resign at any time by giving written notice thereof to the Lenders and the Borrower. Such resignation will not be effective until a replacement agent is appointed. Upon receipt of notice of any such intended resignation, the Required Lenders shall have the right to appoint a replacement to the Resigning Agent who shall be one of the Lenders. Unless an Event of Default has occurred, the consent of the Borrower (which shall not be unreasonably withheld or delayed) to any such replacement shall also be required. If no replacement to the Resigning Agent shall have been so appointed and shall have accepted such appointment within 15 days of receipt of such notice, the Lenders (excluding the Lender that is the Resigning Agent) shall within the following 15 days appoint a replacement who may, but need not be, a Lender. If the Lenders fail to appoint a replacement to the Resigning Agent within such 15 day period, without limitation of its rights under this Subsection 14.14.1, the Resigning Agent may, on behalf of the Finance Parties, appoint a replacement Agent which shall be a financial institution listed in Schedule I, II or III of the *Bank Act* (Canada) or be organized under the laws of Canada (or a Province) or the laws of the United States or any State thereof, in each case which has (or whose Holding Body Corporate has) combined capital and reserves in excess of CAD5,000,000,000 (or the Equivalent Amount in foreign currency) and has (or whose Affiliates have) offices in Toronto. Upon the resignation of a Resigning Agent, the replacement agent shall thereupon succeed to and become vested with all the rights and obligations of the Resigning Agent and the Resigning Agent shall be discharged from its obligations as administration agent under the Loan Documents. A replacement agent shall evidence its acceptance of appointment hereunder by signing and delivering a counterpart of this Agreement to the Borrower and the Resigning Agent. After any Resigning Agent’s resignation or removal hereunder as Agent the provisions of this Article 14 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

14.14.2R *eference Lender.* The Agent may remove the Reference Lender and nominate and appoint any other Lender (or its Affiliate) to act as the Reference Lender in relation to any Credit Facility under this Agreement. Any Reference Lender may resign at any time by giving notice thereof to the Agent. Upon receipt of such resignation notice, the Agent shall appoint a replacement Reference Lender who shall be one of the Lenders (or their Affiliates). Unless an Event of Default has occurred, the Borrower’s consent (which shall not be unreasonably withheld) shall be required to any replacement Reference Lender.

14.14.3Swing *Line Lender.* The Swing Line Lender may be replaced by a Transferee pursuant to and in accordance with the provisions of Subsection 15.10.4.

14.15 Delegation

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

14.16 Required Lender Decisions

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

14.17 Changes, Judgments and Discretions

14.17.1 *General* *al.* The rights of each Finance Party under each Finance Document shall be cumulative and not exclusive of any rights which each Finance Party would otherwise have, and no failure or delay by the Agent or any Lender in exercising any right shall operate as a waiver of it nor shall any single or partial exercise of any right preclude its further exercise or the exercise of any other right. Subject as otherwise provided in Subsections 14.17.2 and 14.17.3, (a) any term, condition, other provision, obligation or agreement contained in any Loan Document may be changed with the consent of the Borrower and the Majority Lenders, (b) any act or thing referred to in any Loan Document may be agreed or consented to by the Majority Lenders and (c) the exercise of any judgment or discretion by the Lenders contained in any Loan Document may be exercised by the Majority Lenders.

14.17.2 *Changes Requiring Every Lender's Consent.* Without the prior consent of every Lender, no change to any Loan Document, agreement or consent to any act or thing referred to in any Loan Document or exercise of any judgment or discretion contained in any Loan Document shall:

- (a) increase the aggregate amount of any Credit Facility, the amount or term of any of the Commitments or the proportion represented by the Rateable Share of any Lender, except to the extent expressly permitted or required in this Agreement;
- (b) postpone or defer the time for the payment of the principal of or interest on any Advance, any Fees or any other amount payable hereunder;
- (c) decrease the rate or amount or change the currency of any principal, interest or Fees payable hereunder or the requirement of *pro rata* application in accordance with (i) each Lender's Rateable Share of all amounts received by the Agent in respect of the Revolver Facility or (ii) its Total Exposure in respect of all amounts received by the Finance Parties after the occurrence of an Enforcement Event;
- (d) require any Lender to make any Advance or its share in any Advance available to finance a Hostile Take-Over Bid if that Lender determines that it has a conflict of interest;
- (e) change Section 10.1 or waive compliance with any of the conditions precedent to Closing set forth therein;

- (f) change the definition of "Majority Lenders", "Rateable Share", "Required Lenders" or "Total Exposure";
- (g) change Section 14.21, 14.25 or 14.8.2 or this Section 14.17; or
- (h) release or postpone any Guarantee, except that the Agent may release and discharge (i) each Guarantee upon Payment in Full of all Finance Obligations owing to all Finance Parties, (ii) the Guarantee of any Subsidiary whose Capital Stock is or any assets which are disposed of in accordance with Subsection 12.2.4 or (iii) to permit a merger or consolidation to take place in accordance with Subsection 12.2.2.

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

14.18 Determination by Agent

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

14.18.2 *Certificate of the Agent as to Rates.* Except as otherwise provided in Subsection 14.19.5, a certificate of the Agent certifying any amount or interest or discount rate shall be conclusive and binding on the parties hereto for all purposes, absent manifest error. No provision hereof shall be construed so as to require the Agent to issue a certificate at any particular time.

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

14.19 Interlender Procedure for Making Advances

14.19.1 *Lenders to provide their Rateable Shares to Agent.* Subject to the terms and conditions of this Agreement, each Relevant Syndicated Facility shall be available to the Borrower in accordance with this Section 14.19. Upon receipt by the Agent of a Borrowing Request, the Agent will promptly notify each Lender of the receipt of such Borrowing Request and of such Lender's Rateable Share of such Borrowing. In the case of an issue of Acceptances, the Agent will round allocations amongst the Lenders to ensure that each Acceptance issued has a face amount which is a whole number multiple of CAD100,000 (and such rounded allocations shall constitute the Lenders' respective Rateable Shares for the purposes of this Agreement). Subject to Sections 6.3 and 9.9, Article 10 and Subsection 14.19.7, each Lender will make its

Rateable Share of each Borrowing under each Relevant Syndicated Facility, or its Net Acceptance Proceeds available to the Agent by paying, no later than 11:00 a.m. (local time in the place of payment) on the Borrowing Date requested by the Borrower, its Rateable Share of such Advance or such Net Acceptance Proceeds to the Agent's Accounts. Subject to Section 9.9 and Article 10, the Agent will make such funds available, upon receipt, to the Borrower on the Borrowing Date by bank transfer to the Borrower's Accounts.

14.19.2 *Li* *mitigation on Agent's Liability.* The obligations of the Agent under this Section 14.19 shall be limited to taking such steps as are commercially reasonable to implement the instructions described in Subsection 14.19.1, and the Agent shall not be liable for any losses and expenses which may be incurred or suffered by the Borrower and occasioned by the failure or delay of funds to reach the designated destination.

14.19.3 *Lenders* *to indemnify Agent for failure to make funds available.* Unless the Agent has been notified by a Lender at least two (2) Business Days prior to the Borrowing Date requested by the Borrower that such Lender will not make available to the Agent its Rateable Share of such Borrowing or its Net Acceptance Proceeds, the Agent may assume that such Lender has made such portion of the Borrowing or such Net Acceptance Proceeds available to the Agent on the Borrowing Date in accordance with the provisions hereof, and the Agent may, in reliance upon such assumption, make available (to the extent applicable) to the Borrower on such date a corresponding amount. If the Agent has made such assumption, to the extent a Lender has not so made its Rateable Share of the Borrowing or its Net Acceptance Proceeds available to the Agent, such Lender agrees to pay to the Agent forthwith on demand, to the extent that such amount is not recovered from the Borrower within seven (7) days of demand (without in any way obligating the Agent to commence any proceeding to recover such amount), such Lender's Rateable Share of the Borrowing or its Net Acceptance Proceeds and all losses and expenses incurred by the Agent in connection therewith together with interest thereon at the prevailing rate applicable to interbank deposit balances plus two (2) percent (2%) per annum for each day from the date such amount is made available by the Agent until the date such amount is paid or repaid to the Agent.

14.19.4 *B* *orrower to repay any Advance not funded by a Lender.* Notwithstanding Subsection 14.19.3, if a Lender fails to pay any portion of any Borrowing or its Net Acceptance Proceeds to the Agent pursuant to Subsection 14.19.3, the Borrower shall, without prejudice to any rights that the Borrower might have against such Lender, repay such amount to the Agent within three (3) Business Days after demand therefor by the Agent together with all losses and expenses incurred by the Agent in connection therewith and interest thereon at the rate payable hereunder by the Borrower in respect of such Borrowing.

14.19.5 *A* *gent to issue Certificate as to Amount payable.* Any amount payable to the Agent pursuant to this Section 14.19 (other than Subsection 14.19.1) shall be set forth in a certificate delivered by the Agent to the Lender concerned and the Borrower (which certificate shall contain reasonable details of how the amount payable is calculated) and shall be *prima facie* evidence thereof. If a Lender makes the payment to the Agent required by this Section 14.19, the amount so paid shall constitute, to the extent thereof, such Lender's Rateable Share of the Borrowing or its Net Acceptance Proceeds for the purposes of this Agreement.

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

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

14.20 Remittance of Payments

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

14.21 Redistribution of Payments

14.21.1*Disproportionate Receipts of Loan Obligations to be Shared.* Except as otherwise provided in Subsection 14.21.6, if a Lender, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment made to it from the Agent in accordance with the provisions hereof) receives payment of a portion of the Loan Obligations due to it before an Enforcement Event occurs which is greater than the proportion received by any other Lender in respect of the aggregate amount of the Loan Obligations due to such other Lender (having regard to the respective Rateable Shares of the

Lenders immediately before such payment is received), the Lender receiving such proportionately greater payment shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Loan Obligations due to the other Lender or Lenders (the “**Selling Lender or Lenders**”) so that the respective receipts shall be *pro rata* according to their respective Rateable Shares.

14.21.2 *Disproportionate Receipts after an Enforcement Event.* Except as otherwise provided in Subsection 14.21.6, if a Lender, through the exercise of any right of set-off, the retention of any In-the-Money Derivative Exposure or otherwise (save for any payment to it from the Agent in accordance with the provisions hereof), receives payment of a portion of the Finance Obligations due to it at the time an Enforcement Event occurs or any time thereafter which is greater than the proportion received by any other Lender in respect of the aggregate amount of the Finance Obligations due to such other Lender (having regard to the respective Total Exposures of the Lenders immediately before such payment is received), the Lenders receiving such proportionately greater payment shall purchase a participation (which shall be done simultaneously with receipt of such payment) in that portion of the Finance Obligations due to the other Lender or Lenders (the “**Selling Lender or Lenders**”) so that the respective receipts shall be *pro rata* according to their respective Total Exposures determined before such payment is received.

14.21.3 *Subsequent Recoveries.* If all or part of a proportionately greater payment received by a purchasing Lender referred to in Subsection 14.21.1 or 14.21.2 shall be recovered from an Obligor by the Selling Lender or Lenders referred to therein, the purchase under such Subsection shall be rescinded and the purchase price paid for such participation shall be returned by such Selling Lender or Lenders to the extent of such recovery, together with interest thereon at the relevant interbank rate calculated and payable from the Business Day following the day such return is requested until it is paid in full.

14.21.4 *Preferential Payments.* If all or part of a proportionately greater payment received by a purchasing Lender referred to in Subsection 14.21.1 or 14.21.2 is found to have been a transfer in fraud of creditors or a preferential payment under any applicable bankruptcy and insolvency legislation or is otherwise required to be returned by such purchasing Lender, the purchase under such Subsection shall be rescinded and the purchase price paid for such participation shall be returned by the Selling Lender or Lenders referred to therein to the extent of such amount returned, together with interest thereon at the prevailing rate applicable to interbank deposit balances calculated and payable from the Business Day following the day such return is requested until it is paid in full.

14.21.5 *Notice Requirement.* If any Lender receives or recovers payment of any amount it is required to share pursuant to Subsections 14.21.1 or 14.21.2, it shall promptly provide full particulars thereof to the Agent and the Agent shall promptly provide copies of such particulars to the other Lenders.

14.21.6 *Credit Protection.* The provisions of Subsections 14.21.1, 14.21.2 and 14.21.5 shall not apply to any credit protection purchased by a Lender without financial assistance from or independent recourse by the protection provider to any Obligor or any of its Affiliates.

14.22 Defaulting Lender

If a Lender (a “**Defaulting Lender**”) fails to pay to the Agent for the account of the Swing Line Lender or Issuing Bank (the “**Unpaid Lender**”) any amount due from it pursuant to Subsection 3.4.1 or 7.3.2 (the balance thereof for the time being unpaid being referred to in this Section 14.22 as an “**overdue amount**”) then until the Defaulting Lender has made payment of the overdue amount (plus interest as provided below) in full (and without in any way limiting the rights of the Unpaid Lender in respect of such failure):

- (a) the Defaulting Lender shall not be entitled to receive any payment in respect of the Credit Facilities or otherwise in respect of any Finance Document;
- (b) each amount received by the Agent which would otherwise be for the account of the Defaulting Lender shall be paid to the Unpaid Lender; and
- (c) the overdue amount shall bear interest payable by the Defaulting Lender to the Unpaid Lender at the rate payable by the Borrower in respect of the Loan Obligations which gave rise to such overdue amount.

14.23 Prompt Notice to Lenders

14.23.1 *Distribution of Information.* The Agent agrees to provide to the Lenders copies of the information, notices and reports received by it from the Borrower for distribution to the Lenders pursuant to this Agreement, including information provided pursuant to Subsection 12.1.12, promptly upon receipt of same.

14.23.2 *Distribution by Use of Websites.* The Agent may satisfy its obligations under this Agreement to deliver to the Lenders copies of the information, notices and reports referred to in Subsection 14.23.1 by posting this information onto an internet website designated by the Agent to which the Lenders have access. The Agent shall supply the Lenders with the address of and any relevant password specifications for that designated website.

14.24 Several Debts of the Lenders

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

14.25 Enforcement of Collection Rights

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

- (a) first, in or towards payment of all of the Agent’s losses and expenses and disbursements;
- (b) secondly, in or towards payment of all Finance Obligations which are due and payable by the Borrower at such time to the Lenders on account of the Finance

Obligations owing by the Borrower *pro rata* to the Total Exposures of the Lenders;

- (c) thirdly, if the Finance Obligations have been paid in full, in payment to any person to whom the Agent is obliged to pay in priority to the Obligor otherwise entitled thereto, to the extent it is so obliged; and
- (d) fourthly, thereafter, in payment to the Obligor entitled thereto.

The fact that the Agent may make a payment pursuant to paragraph (c) or (d) above or may determine that the Finance Obligations have been paid in full, will not thereafter prevent the Agent from applying any further monies, or any credit balance on any account, in the order set out in this Section 14.25.

ARTICLE 15 GENERAL

15.1 Costs and Expenses

The Borrower shall on demand pay to the Agent, and indemnify and save harmless the Agent on a full indemnity basis from and against, the amount of all reasonable out-of-pocket fees, costs and expenses incurred and disbursements made by the Agent (including the reasonable fees and out-of-pocket expenses of the Lenders' Counsel (limited to one legal firm for each relevant jurisdiction) and those of accountants, experts, consultants and other representatives retained by the Agent) in connection with each of:

- (a) the preparation, negotiation, settlement, execution, delivery, entry into effect and administration of each Loan Document and/or the satisfaction of any conditions or obligations specified in Article 10 or in the Post-Closing Undertaking;
- (b) post closing costs;
- (c) each change to each Loan Document; and
- (d) the interpretation, defence, establishment, preservation, protection or enforcement of rights of the Finance Parties under each Loan Document.

15.2 Indemnification by the Borrower

15.2.1 *Borrowings.* The Borrower shall on demand pay to the Agent for the account of each Lender, and indemnify and save harmless each Lender on a full indemnity basis from and against, the amount of all claims and losses and expenses, including claims and losses and expenses sustained by such Lender in connection with the liquidation or redeployment, in whole or in part, of deposits or funds borrowed or acquired by such Lender to fund such Lender's Rateable Share in any Borrowing, which such Lender sustains or incurs:

- (a) if for any reason a Borrowing does not occur on a date requested by the Borrower, unless the Borrowing does not occur by reason of the breach by the Agent or such Lender of its obligations under this Agreement;

- (b) if the Borrower fails to give any notice required to be given by it hereunder in the manner and at the time specified herein;
- (c) as a consequence of any failure by the Borrower to repay any amount when required by the terms of this Agreement; or
- (d) if the whole or any part of such Lender's Rateable Share in any Libor Loan made available to the Borrower is paid to such Lender or converted to another Type of Advance other than on the Period End Date relating thereto.

15.2.2 *Other.* The Borrower shall forthwith on demand, defend, indemnify and save harmless each of the Finance Parties and their respective representatives (each, an "**Indemnified Party**") on a full indemnity basis from and against any and all claims and losses and expenses (including interest and, to the extent permitted by applicable law, penalties, fines and monetary sanctions) which an Indemnified Party suffers or incurs as a result of or otherwise in respect of:

- (a) any claim of any kind relating to the Environment which arises out of the performance of, or the enforcement or exercise of any right under, any Loan Document, including any claim in nuisance, negligence, strict liability or other cause of action arising out of a discharge of Hazardous Materials into the Environment, any fines or orders of any kind that may be levied or made pursuant to an Environmental Law in each case relating to or otherwise arising out of any of the assets of the Borrower or any of its Subsidiaries or the Core Business;
- (b) the direct or indirect use or proposed use of the proceeds of any Advance;
- (c) any Default; or
- (d) any litigation to which any Indemnified Party is party arising out of the execution, delivery or performance of, or the enforcement of any right under any Loan Document.

Each Lender shall be constituted as the agent and bare trustee of each Indemnified Party who is its own representative and shall hold and enforce each such Indemnified Party's rights under this paragraph for such party's benefit. The foregoing indemnity shall not apply in respect of claims or losses and expenses of an Indemnified Party to the extent that they are determined by a Final Judgment to have directly resulted from the gross negligence or wilful misconduct of any Indemnified Party.

15.3 Application of Payments

Any payments received by the Finance Parties in respect of the Loan Obligations from time to time may, notwithstanding any appropriation by the Borrower and any of its Subsidiaries, be appropriated to such parts of the Loan Obligations then due and owing by the Borrower and any of its Subsidiaries to the Finance Parties and in such order as the Agent sees fit, and the Agent shall have the right to change any appropriation at any time.

15.4 Set-Off

The Loan Obligations will be paid by the Borrower without regard to any equities between the Borrower and each Finance Party or any right of set-off or counterclaim. Any Debt owing by any Finance Party to the Borrower, direct or indirect, extended or renewed, actual or contingent, matured or not, may be set-off or applied against, or combined with, the Loan Obligations by that Finance Party at any time, either before or after maturity, without demand upon or notice to anyone, and the terms of such Debt shall be changed hereby to the extent required to permit such set-off, application and combination.

15.5 Rights in Addition

The rights conferred by each Loan Document are in addition to, and not in substitution for, any other rights any Finance Party may have under that Loan Document or any other Loan Document, at law, in equity or by or under Applicable Law or any agreement. The Finance Parties may proceed by way of any proceeding at law or in equity and no right of the Finance Parties shall be exclusive of or dependent on any other. The Finance Parties may exercise any of their respective rights separately or in combination and at any time.

15.6 Certificate Evidence

A certificate prepared by any Finance Party and provided to the Borrower setting forth any interest rate or any amount payable under this Agreement, including the amount of compensation or loss and expense payable under Section 8.6 or 15.2, shall be conclusive and bind the Borrower, absent manifest error.

15.7 Evidence of Debt

15.7.1 *Agent's Books.* The Agent shall open and maintain on its books accounts evidencing all Borrowings under each Relevant Syndicated Facility and all amounts owing by the Borrower to each Relevant Lender under each Relevant Syndicated Facility. The Agent shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower under each Relevant Syndicated Facility. The information entered in the accounts shall constitute, in the absence of manifest error, *prima facie* evidence of the existence and quantum of the obligations of the Borrower to each Relevant Lender under each Relevant Syndicated Facility. The Borrower shall, on reasonable notice to the Agent, be entitled to obtain promptly from the Agent copies of extracts of all entries made in such accounts. If there is any conflict or inconsistency between the accounts of the Agent maintained pursuant to this Subsection 15.7.1 and the accounts of any other party hereto, the accounts of the Agent shall govern and be binding on the other parties hereto, absent manifest error.

15.7.2 *Swing Line Lenders' Books.* The Swing Line Lender shall open and maintain on its books accounts evidencing all Borrowings under the Swing Line and all amounts owing by the Borrower under the Swing Line. The Swing Line Lender shall enter in the accounts details of all amounts from time to time owing, paid or repaid by the Borrower under the Swing Line. The information entered in the accounts shall constitute, in the absence of manifest error, *prima facie* evidence of the existence and quantum of the obligations of the Borrower to the Swing Line Lender under the Swing Line. The Borrower shall, on reasonable notice to the Swing Line

Lender, be entitled to obtain promptly from the Swing Line Lender copies of extracts of all entries made in such accounts.

15.8 Notices

Any notice, demand, consent, approval or other communication to be made or given under or in connection with this Agreement (a "Notice") shall be in writing and may be made or given by personal delivery, by facsimile or (except to the Agent) by e-mail addressed to the Agent and the Borrower at their respective addresses set out below:

To the Borrower:

CML HealthCare Inc.
6560 Kennedy Road
Mississauga, Ontario
L5T 2X4

Attention: Mr. Tom Weber
Facsimile: (905) 565-2844
e-mail: webert@cml.ca

and, in the case of any Notice given to Borrower pursuant to Section 13.2, with a copy to:

Goodmans LLP
250 Yonge Street
Toronto, Ontario
M5B 2M6

Attention: Mr. Jeffrey Citron
Facsimile: 416 979 1234
E-Mail: jcitron@goodmans.ca

To the Agent:

The Toronto-Dominion Bank, as Agent
77 King Street West, 18th Floor
Toronto, Ontario
M5K 1A2

Attention: Vice President, Loan Syndications - Agency
Telephone: 416 983 6757
Facsimile: 416 982 5535

or to such other address as such party may from time to time notify the other in accordance with this Section 15.8, and to the Lenders at their respective Lending Offices. Any Notice made or given by personal delivery shall be conclusively deemed to have been given at the time of actual delivery or, if made or given by facsimile or (except to the Agent) e-mail at the opening of business on the first Business Day following the transmittal thereof, provided the party sending

such Notice receives confirmation of receipt from the recipient's telecopy machine or e-mail system. Notwithstanding the foregoing, (a) the Agent shall not be deemed to have received any Notice until it is actually received by and brought to the attention of an officer of the Agent charged with the administration of this Agreement, (b) the Agent may in its discretion act upon verbal Notice from any person reasonably believed by the Agent to be a person authorized by the Borrower or Lender to give instructions under or in connection with this Agreement including, any request by the Borrower for a Borrowing and (c) any Notice received by the Agent on a day which is not a Business Day or after 10:00 a.m. on any Business Day shall, unless the Agent waives this Clause (c), be deemed to be received by the Agent at 9:00 a.m. on the next Business Day. The Finance Parties shall not be responsible for any error or omission in such instructions or in the performance thereof.

15.9 Judgment Currency

If, for the purposes of obtaining or enforcing judgment in any court in any jurisdiction, it becomes necessary to convert into the currency of the jurisdiction giving such judgment (the "**Judgment Currency**") an amount due under any Loan Document in any other currency (the "**Original Currency**"), then the date on which the rate of exchange for conversion is selected by that court is referred to herein as the "**Conversion Date**". If there is a change in the rate of exchange between the Judgment Currency and the Original Currency between the Conversion Date and the actual receipt by any Finance Party of the amount due to it under such Loan Document or under such judgment, the Borrower shall, notwithstanding such judgment, pay all such additional amounts as may be necessary to ensure that the amount received by that Finance Party in the Judgment Currency, when converted at the rate of exchange prevailing on the date of receipt, will produce the amount due in the Original Currency. The Borrower's liability hereunder constitutes a separate and independent liability which shall not merge with any judgment or any partial payment or enforcement of payment of sums due under this Agreement.

15.10 Successors and Assigns

15.10.1B *enefit & Burden.* The Loan Documents shall enure to the benefit of and be binding on the parties thereto, their respective successors and each assignee of some or all of the rights or obligations of the parties under the Loan Documents permitted by this Section 15.10. Any reference in any such Loan Document to any party thereto shall (to the extent the context so admits) be construed accordingly.

15.10.2B *orrower.* The Borrower may not assign all or any part of any of its rights or obligations in respect of any Credit Facility or under any Loan Document, except as permitted by Subsection 12.2.2.

15.10.3P *articipation.*

- (a) Each Lender may grant a participation to any other person (a "**Participant**") in the whole or any part of any of its Commitments (including its Rateable Share in any related Advances) under which the Participant shall be entitled to the benefit of the same rights under this Agreement with respect to such Participation as if it were a party hereto in the place and stead of such Lender; provided that, in respect

of such participated share of its Commitments and as amongst the Participant and all parties to this Agreement, (i) such Lender (and not the Participant) shall remain entitled to enforce such rights, and shall remain responsible for the performance of all obligations, of such Lender under this Agreement with respect to such participated share, (ii) such Participant shall have no direct enforceable rights against any other party hereto in respect of such participated share and (iii) no party hereto, other than the Lender granting such participation, shall have any obligations to such Participant with respect to such participated share.

- (b) If adjustments to the Rateable Shares of the Revolver Lender in Advances pursuant to Subsection 3.4.1 or 7.3.2 cannot be made by reason of any Bankruptcy Proceeding and as a result thereof the Revolver Lenders no longer share rateably in the aggregate amount of the Advances outstanding under the Revolver Facility in their respective Rateable Shares, each Revolver Lender hereby agrees that it shall forthwith purchase from the Swing Line Lender, each Issuing Bank or each other Revolver Lender as applicable, such participations in the Advances outstanding under the Revolver Facility (which shall be deemed to include any outstanding Standby Instruments under the Swing Line) as shall be necessary to cause the Revolver Lenders to share in such Advances rateably based on their respective Rateable Shares (taking into account any increase therein pursuant to Subsection 3.4.1(a) which effectively increases the Revolver Commitment by the Swing Line Commitment).

15.10.4A *Assignments.* Each Lender (a "**Transferring Lender**") may assign any of its Commitments (including its share in any related Advances made hereunder), or any part thereof in a minimum amount of CAD5,000,000 (provided that, there shall be no minimum amount, if an Event of Default has occurred and is continuing), to another Lender or any Affiliate or Approved Fund of the Transferring Lender or another Lender, or any other person, with the consent of the Agent, and, unless an Event of Default has occurred that is continuing, with the consent of the Borrower, such consent not to be unreasonably withheld or delayed. Any such assignment to any person permitted pursuant to the preceding sentence (a "**Transferee**") shall be made pursuant to a loan transfer agreement (a "**Loan Transfer Agreement**") substantially in the form of Schedule 7 (or in such other form to substantially the same effect as the Agent and the Borrower may approve). Each Loan Transfer Agreement must be delivered to the Agent at least five (5) Business Days before it takes effect (or such lesser time period as the Agent, in its discretion, may permit) accompanied, if such assignment is not being made to another Lender or an Affiliate or Approved Fund of an existing Lender, by payment to the Agent of a processing fee of CAD3,500. Each party hereto hereby agrees that any such Transferee shall be subject to the obligations identical to the obligations assigned under any such Loan Transfer Agreement and shall be entitled to rights identical to the rights assigned to such Transferee as if such Transferee were named in this Agreement as an original party in substitution for the Transferring Lender (or its predecessor in title) in respect of each such Commitment, or part thereof, assigned, and such Transferring Lender shall be released from all obligations in relation to each of its Commitments, or part thereof, so assigned in accordance with the terms of the Loan Transfer Agreement.

15.10.5 *Schedule 1*. The Agent may from time to time revise Schedule 1 to record the Lenders and their respective Commitments after giving effect to assignments referred to in Subsection 15.10.4 above. Any such revised Schedule 1 shall be *prima facie* evidence of the identities and Commitments of the Lenders. The Agent shall provide a copy of any such revised Schedule 1 to the Borrower and each Lender promptly upon request.

15.10.6 *Disclosure*. Each Lender may disclose to any prospective or actual Participant in or Transferee of any rights or obligations in respect of any Credit Facilities any information regarding the Borrower and any of its Subsidiaries or any of its business affairs so long as the prospective or actual Participant or Transferee agrees to be bound by the confidentiality provisions of this Subsection 15.10.6. Each Lender shall keep confidential and not disclose to any third party (excluding for certainty its own representatives and Affiliates) any confidential information received by such Lender from the Borrower pursuant to this Agreement, save that any Lender may disclose any such confidential information (a) as provided in the preceding sentence, (b) to the Agent or any other Lender, (c) to any prospective or actual replacement Agent, (d) to the extent required by Applicable Law, (e) to the extent required to protect the interests of any Lender in any actual, pending or threatened proceeding, or (f) as may be necessary or desirable in order to enforce the rights of the Finance Parties under any Finance Document.

15.10.7 *Substitute Lenders*. If at any time (a) the Borrower becomes obligated to compensate any Lender for additional amounts pursuant to Section 8.6 or increased payments pursuant to Subsection 8.9.1(d) or (b) or any Lender becomes an Affected Lender and either ceases to make its Rateable Share available in any Libor Loans pursuant to Subsection 8.7.1 or Section 8.8, then the Borrower may, on 10 Business Days' prior written notice to the Agent and such Lender (the "**Replaceable Lender**"), replace the Replaceable Lender by causing the Replaceable Lender to (and the Replaceable Lender shall be obligated to) assign its rights and obligations under this Agreement pursuant to Subsection 15.10.4 to another Lender that has agreed to accept such assignment or to another person selected by the Borrower that is acceptable to the Agent, acting in its discretion exercised reasonably, (a "**Replacement Lender**") for a purchase price equal to the Loan Obligations owing to the Replaceable Lender, including all accrued interest and Fees and other amounts payable hereunder, together with such amount as would be payable to the Replaceable Lender under Subsection 15.2.1 if the Rateable Share of the Replaceable Lender in each outstanding Advance were actually being paid by the Borrower instead of being purchased by way of assignment pursuant to Subsection 15.10.4; provided that (i) neither the Agent nor any Lender shall have any obligation to the Borrower to find a Replacement Lender, (ii) in circumstances where a Replaceable Lender is sought to be replaced pursuant to this Subsection 15.10.7, in order for the Borrower to be entitled to replace such Replaceable Lender, such replacement must take place no later than 120 days after the date the Replaceable Lender shall have notified the Agent that it had become a Replaceable Lender, (iii) in no event shall the Replaceable Lender be required to pay or surrender to such Replacement Lender any of the principal, interest, Fees or other amounts received by the Replaceable Lender pursuant to this Agreement and (iv) the Borrower shall only be entitled to replace a Replaceable Lender pursuant to this Subsection 15.10.7 if no Event of Default has occurred.

15.11 Canadian Anti-Money Laundering Legislation

15.11.1A *ML Legislation.* The Borrower acknowledges that, pursuant to Canadian Anti-Money Laundering Legislation, the Finance Parties may be required to obtain, verify and record information regarding the Borrower, its directors, authorized signing officers, direct or indirect shareholders or other persons in Control of the Borrower, and the transactions contemplated hereby, and disclose such information to governmental authorities. The Borrower consents to such information being obtained, verified, recorded and disclosed to governmental authorities and agrees to promptly provide to the Finance Parties all such information, including supporting documentation and other evidence, as may be reasonably requested by any Finance Parties, or any prospective Transferee or participant of a Finance Parties, in order to comply with Canadian Anti-Money Laundering Legislation.

15.11.2No *Agent Obligations.* Each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower or any authorized signatories of the Borrower on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any such authorized signatory in doing so.

15.12 Survival

The Loan Obligations payable under Sections 7.2, 8.6, 8.9, 15.1, and 15.2, (“**Indemnity Obligations**”) shall survive the Payment in Full of all other Loan Obligations owing by the Borrower to the Finance Parties and shall continue in full force and effect until such Indemnity Obligations are irrevocably paid in full.

15.13 Time of the Essence

Time is of the essence of each provision of each Loan Document.

15.14 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules. Such choice of law shall, however, be without prejudice to or limitation of any other rights available to the Finance Parties under the laws of any jurisdiction where the Borrower or any of its Subsidiaries or its assets may be located.

15.15 Jurisdiction

15.15.1*Submission to Jurisdiction and Waiver of Objections.* With respect to any claim arising out of this Agreement, any other Finance Document or any other agreement relating to any Finance Document (collectively, the “**Finance Agreements**”):

- (a) for the exclusive benefit of the Finance Parties, the Borrower irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of:
 - (i) the Province of Ontario, Canada located at Toronto; and

- (ii) the jurisdiction in which the chief executive office of the Borrower or any of its Subsidiaries is located or in which it is incorporated or under the laws of which it is formed located at the principal financial center of such jurisdiction,

including any appellate court from any thereof; and

- (b) the Borrower irrevocably waives:
 - (i) any objection which it may have at any time to the laying of venue of any proceeding arising out of or relating to any of the Finance Agreements brought in any Court of Primary Jurisdiction;
 - (ii) any claim that any such proceeding brought in any Court of Primary Jurisdiction has been brought in an inconvenient forum;
 - (iii) the right to object, with respect to such proceeding brought in any Court of Primary Jurisdiction, that such court does not have jurisdiction over the Borrower; and
 - (iv) the right to require the Finance Parties to post security for costs in any proceeding brought in any Court of Primary Jurisdiction.

15.15.2*F* *inance Party May Sue in Another Jurisdiction.* Nothing in this Agreement will be deemed to preclude the Finance Parties from bringing any proceeding in respect of any Finance Agreement in any other jurisdiction.

15.15.3*Fi* *nal Judgment.* The Borrower agrees that a Final Judgment in any proceeding commenced in any Court of Primary Jurisdiction shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment or in any other manner provided by law.

15.15.4*Wa* *iver of Trial by Jury.* For the purposes of any proceeding commenced in the United States, each of the Borrower and each Finance Party irrevocably waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in such proceeding (a) to enforce or defend any rights under or in connection with or relating to any Finance Agreement, or (b) arising from or relating to any relationship existing in connection with any Finance Agreement, and agrees that any such proceeding shall be tried before a court and not before a jury. The Borrower hereby (c) certifies that no representative of any Finance Party has represented expressly or otherwise that such Finance Party would not, in the event of any proceeding, seek to enforce the foregoing waiver and (d) acknowledges that each Finance Party has been induced to enter into this Agreement by, among other things, the waivers and certifications in this Subsection 15.15.4.

15.16 Service of Process

15.16.1*Mann* *er of Service.* The Borrower irrevocably consents to the service of process out of the Courts of Primary Jurisdiction in accordance with the local rules of civil procedure or by mailing a copy thereof, by registered mail, postage prepaid to the Borrower at the address of

the Borrower, or by sending a copy thereof by facsimile or e-mail in pdf format to the Borrower at the facsimile number or e-mail address of the Borrower determined under Section 15.8.

15.16.2A *ppointments of Agents for Service.* The Borrower irrevocably designates and appoints each other Obligor as its agent to accept and acknowledge on its behalf any and all process which may be served in connection with any proceeding arising out of or relating to any Finance Agreement brought in any of the Courts of Primary Jurisdiction, such service, to the extent permitted by applicable law, being hereby conclusively acknowledged by the Borrower to be effective and binding service on it in every respect whether or not it is carrying on, or has at any time carried on, business in the jurisdiction in which the Courts of Primary Jurisdiction are located. The Borrower irrevocably consents to the service of process out of the Court of Primary Jurisdiction by personal service on the Borrower or on any such process agent.

15.16.3A *ceptances of Appointments.* The Borrower confirms to the Finance Parties that it has accepted its appointment to act as process agent on behalf of each other Obligor contained in any Finance Agreement to which each such other Obligor is party which may be served in connection with any proceeding arising out of or relating to any such other Finance Agreement brought in any of the Courts of Primary Jurisdiction. Until the Loan Obligations are paid in full, the Borrower covenants and agrees to maintain each such appointment as such process agent.

15.17 Limitation Period

The Borrower agrees with the Finance Parties to vary the limitation period under the *Limitations Act, 2002* (Ontario) otherwise applicable to this Agreement and any claim hereunder to be the maximum limitation period permitted under that Act (currently 15 years as established under Section 15 of that Act).

15.18 Invalidity

If any provision of any Loan Document is determined to be invalid or unenforceable by a Final Judgment, that provision shall be deemed to be severed therefrom, and the remaining provisions of such Loan Document shall not be affected thereby and shall remain valid and enforceable. The parties hereto shall (and, in the case of the Borrower, the Borrower shall cause each other Obligor to), at the request of any other party hereto, negotiate in good faith with the Agent to replace any invalid or unenforceable provision contained in any Loan Document with a valid and enforceable provision which has the commercial effect as close as possible to that of the invalid or unenforceable provision, to the extent permitted by law.

15.19 Changes

Each Loan Document may only be changed by a written agreement signed by the applicable party or parties sought to be bound thereby in accordance with Section 14.17.

15.20 Entire Agreement

There are no representations, warranties, conditions, other agreements or acknowledgments, whether direct or collateral, express or implied, that form part of or affect this Agreement or any other Loan Document other than as expressed herein or in such other Loan

Document. The execution of each Loan Document has not been induced by, nor does the Borrower rely upon or regard as material, any representations, warranties, conditions, other agreements or acknowledgments not expressly made in any Loan Document.

15.21 This Agreement to Govern

If there is any inconsistency between the provisions of this Agreement and the provisions of any other Loan Document (other than the Fee Letter) to which any Obligor is party, the provisions hereof shall govern and apply to the extent of the inconsistency.

15.22 Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this Agreement (including any change to this Agreement) by any party hereto to the other parties to this Agreement by facsimile transmission or e-mail in pdf format, or posting a copy of a signature page of this Agreement (including any change to this Agreement) signed by any party hereto on the internet website designated by the Agent under Subsection 14.23.2, shall be as effective as delivery to the other parties hereto of a manually executed counterpart hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties have executed this amended and restated credit agreement as of the date first written above.

BORROWER:

CML HEALTHCARE INC.

By: "Tom Weber"
Name: Tom Weber
Title: Chief Financial Officer

By: _____
Name:
Title:

THE LENDERS:

THE TORONTO-DOMINION BANK

By: "*Rahim Kabani*"

Name: Rahim Kabani

Title: Vice President

By: "*Sanup Gupta*"

Name: Sanup Gupta

Title: Vice President

NATIONAL BANK OF CANADA

By: "*Ben Ciallella*"

Name: Ben Ciallella

Title: Managing Director

By: "*Ian Gillespie*"

Name: Ian Gillespie

Title: Managing Director

BANK OF MONTREAL

By: "*Sean P. Gallaway*"

Name: Sean P. Gallaway

Title: Vice President

By: _____

Name:

Title:

THE BANK OF NOVA SCOTIA

By: "*James J. Rhee*"

Name: James J. Rhee

Title: Director

By: "*Steve Holyman*"

Name: Steve Holyman

Title: Associate Director

**CANADIAN IMPERIAL BANK OF
COMMERCE**

By: "*Scott Black*"

Name: Scott Black

Title: Executive Director

By: "*Brian Mullan*"

Name: Brian Mullan

Title: Director

ROYAL BANK OF CANADA

By: "*Chris Cowan*"

Name: Chris Cowan

Title: Authorized Signatory

By: _____

Name:

Title:

ALBERTA TREASURY BRANCH

By: "*Don Schultz*"

Name: Don Schultz

Title: Director

By: "*Gine Guirguis*"

Name: Gine Guirguis

Title: Director

**BANK OF TOKYO-MITSUBISHI UFJ
(CANADA)**

By: "*Masaya Murakami*"

Name: Masaya Murakami

Title: Executive Vice President

By: _____

Name:

Title:

THE AGENT:

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

By: "Wayne Shiplo"

Name: Wayne Shiplo

Title: Vice President, Loan Syndications -
Agency

**SCHEDULE I
COMMITMENTS**

Lenders	Revolver Commitment	Swing Line Commitment	CAD Term Commitment	USD Term Commitment
The Toronto-Dominion Bank	CAD10,000,000	CAD10,000,000	CAD44,600,000	USD14,302,080
National Bank of Canada	CAD16,500,000	-	CAD34,000,000	USD10,900,000
Bank of Montreal	CAD12,000,000	-	CAD23,800,000	USD7,630,000
The Bank of Nova Scotia	CAD12,000,000	-	CAD23,800,000	USD7,630,000
Canadian Imperial Bank of Commerce	CAD12,000,000	-	CAD23,800,000	USD7,630,000
Royal Bank of Canada	CAD12,000,000	-	CAD23,800,000	USD7,630,000
Alberta Treasury Branch	CAD9,500,000	-	CAD19,650,000	USD6,300,000
Bank of Tokyo-Mitsubishi UFJ (Canada)	CAD6,000,000	-	CAD14,350,000	USD4,600,000
TOTALS:	CAD90,000,000	CAD10,000,000	CAD207,800,000	USD66,622,080

**SCHEDULE 2
FORM OF BORROWING REQUEST**

TO: **The Toronto-Dominion Bank, as Agent**
77 King Street West, 18th Floor
Toronto, Ontario
M5K 1A2

Attention: **Vice President, Loan Syndications - Agency**
Facsimile: **416 982 5535**

RE: **Credit Facilities for CML HealthCare Inc.**

Reference is made to the amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "**Credit Agreement**") among CML HealthCare Inc. as Borrower, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Borrowing Request which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

1. **Request.** The Borrower hereby requests a Borrowing as follows:

(a) **Credit Facility**

(b) **Borrowing Date**

(c) **Aggregate amount of Borrowing**

CAD _____

USD _____

(d) **Type and Amount of Borrowing**

(i) ()

	<u>Amount</u>	<u>Converted From</u> <u>(if Applicable)</u>
--	---------------	---

() Canadian Prime Rate Loan	CAD _____	_____
------------------------------	-----------	-------

() US Base Rate Loan	USD _____	_____
-----------------------	-----------	-------

(ii) () Acceptances

<u>Face Amount</u>	<u>Tenor in Months</u>	<u>Rollover Amount</u> <u>(if Applicable)</u>	<u>Converted From</u> <u>(if Applicable)</u>
CAD _____	_____	CAD _____	_____

(iii) () Libor Loan

<u>Amount</u>	<u>Interest Period</u>	<u>Rollover Amount</u> <u>(if Applicable)</u>	<u>Converted From</u> <u>(if Applicable)</u>
USD _____	_____	USD _____	_____

2. **Other.** The Borrower represents, warrants and agrees:

- (a) Each of the representations and warranties deemed to be repeated in Section 11.1 of the Credit Agreement are (i) true, accurate and complete in all material respects in the case of each such representation and warranty which is not already subject to a materiality qualification and (ii) true, accurate and complete in all respects in the case of each such representation and warranty which is already subject to a materiality qualification; in each case on and as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof.
- (b) No Default has occurred and is continuing on the date hereof or will result from the Borrowing requested herein.
- (c) The undersigned will immediately notify you if it becomes aware of the occurrence of any event between the date hereof and the Borrowing Date which would mean that the statements in the immediately preceding paragraphs (a) and (b) would not be true if made on the Borrowing Date.
- (d) All other conditions precedent to this Borrowing set out in Article 10 of the Credit Agreement have been fulfilled or waived in writing by the Required Lenders.

DATED this _____ day of _____, _____.

CML HEALTHCARE INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

**SCHEDULE 3
FORM OF CANCELLATION NOTICE**

**TO: The Toronto-Dominion Bank, as Agent
77 King Street West, 18th Floor
Toronto, Ontario
M5K 1A2**

Attention: Vice President, Loan Syndications - Agency
Facsimile: 416 982 5535

RE: Credit Facilities for CML HealthCare Inc.

Reference is made to the amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "Credit Agreement") among CML HealthCare Inc. as Borrower, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Cancellation Notice which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

Notice is hereby given in accordance with Section 9.3 of the Credit Agreement that the undersigned wishes to cancel the Total Commitment by the amount of CAD _____, allocated as to CAD _____ to the Revolver Facility and CAD _____ to the Swing Line, such cancellation to take effect on _____, 200__.

DATED this ____ day of _____, _____.

CML HEALTHCARE INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

**SCHEDULE 4
FORM OF REPAYMENT NOTICE**

TO: **The Toronto-Dominion Bank, as Agent**
77 King Street West, 18th Floor
Toronto, Ontario
M5K 1A2

Attention: Vice President, Loan Syndications - Agency

RE: **Credit Facilities for CML HealthCare Inc.**

Reference is made to the amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "**Credit Agreement**") among CML HealthCare Inc. as Borrower, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Repayment Notice which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

Notice is hereby given in accordance with Section _____ of the Credit Agreement that the undersigned commits to repay the _____¹ under the _____² Facility [Which has a current Period End Date expiring on _____, _____] in the amount of [CAD/USD] _____ on _____, _____.

DATED this ____ day of _____, ____.

CML HEALTHCARE INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

¹ Specify type of Borrowing

² Specify Credit Facility

**SCHEDULE 5
SUBSIDIARIES OF THE BORROWER; OWNERSHIP OF SUBSIDIARY STOCK;
DIRECTORS AND OFFICERS; AFFILIATES**

1. Subsidiaries

Subsidiary	Jurisdiction of Organization	% equity interest owned by Company	Immaterial Subsidiary Y/N	Guarantor Y/N
CML Healthcare (Hamilton) Inc.	Ontario	100%	Y	Y
Community Diagnostics Inc.	Ontario	100%	Y	Y
Richmond Technical Services Ltd.	Ontario	100%	Y	Y
DC Diagnosticare (Quebec) Inc.	Quebec	100%	Y	Y
Seaforth Radiology Centre Inc. ¹	Quebec	100% (indirect)	Y	Y
DC Diagnosticare (Manitoba) Inc.	Manitoba	100%	Y	Y
Novoquest Research Inc.	Delaware	100%	Y	Y
Evergreen Business Services Ltd.	British Columbia	100%	Y	Y
American Radiology Services LLC	Delaware	100% (indirect)	N	Y
American Radiology Service of Delaware Inc.	Delaware	100% (indirect)	N	Y
Radiology Alliance Delivery System, LLC	Maryland	100% (indirect)	N	Y
Raven Holdings U.S., Inc.	Delaware	100%	N	Y
CML HealthCare Finance Co. Inc. (Delaware)	Delaware	100% (indirect)	N	Y
CML HealthCare Rhode Island LLC	Delaware	100% (indirect)	Y	N

¹ Subsidiary of DC Diagnosticare (Quebec) Inc.

2. Affiliates

Calvert Medical Imaging Center (Joint Venture)
Upper Chesapeake Health Imaging Centre, LLC (Joint Venture)

3. Directors and Officers

Directors

1. Stephen R. Wiseman
2. Dr. John D. Mull
3. Steven W. Chepa
4. Dr. Joseph Fairbrother
5. Robert P. Fisher Jr.
6. Patrice E. Merrin
7. Gery J. Barry

Officers

1. Paul J. Bristow – President and Chief Executive Officer
2. Tom Weber – Chief Financial Officer and Executive Vice President, Finance & Administration
3. Kent Nicholson – Chief Operating Officer

4. Legal, Regulatory, Contractual or other Restriction

Nil

**SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE**

TO: **The Toronto-Dominion Bank, as Agent**
77 King Street West, 18th Floor
Toronto, Ontario
M5K 1A2

Attention: **Vice President, Loan Syndications - Agency**
Facsimile: **416 982 5535**

RE: **Credit Facilities for CML HealthCare Inc.**

Reference is made to the amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "**Credit Agreement**") between CML HealthCare Inc. as Borrower, the Institutions named therein as Lenders and The Toronto-Dominion Bank, as Administration Agent. All words used in this Compliance Certificate which are defined or given extended meanings in the Credit Agreement have the respective meanings attributed to them in the Credit Agreement.

This Compliance Certificate is given pursuant to Subsection 12.1.12(e) of the Credit Agreement in respect of the Fiscal Quarter ending on _____, 20____ (the "**Relevant Fiscal Quarter**").

The Borrower hereby certifies as follows:

- (a) **Leverage Ratio.** The attachment hereto shows the calculation of the Leverage Ratio for the Relevant Fiscal Quarter to be __:1.0 which does not exceed the maximum limit of 3.0:1.0 prescribed for this ratio.
- (b) **Interest Coverage Ratio.** The attachment hereto shows the calculation of the Interest Ratio for the Relevant Fiscal Quarter to be __:1.0 which is not less than the minimum limit of 4.0:1.0 prescribed for this ratio.
- (c) **Aggregate Asset Disposition Amount.** The attachment hereto shows the calculation of the aggregate total amount of all Net Proceeds Amounts from all Asset Dispositions (excluding net proceeds derived from ARS Forward Transactions) to the extent they were not applied to Property Reinvestment Applications within 12 months after such Asset Dispositions from and including the Initial Closing Date to the end of the Relevant Fiscal Quarter and the calculation of the amount, if any, required to be prepaid pursuant to Subsection 9.4.1.
- (e) **Debt Issues.** The attachment hereto shows the calculation of all proceeds of the issuance of Debt of ~~the Fund, any Fund Subsidiary,~~ the Borrower or any of its Subsidiaries during the Relevant Test Period.

- (e) **Equity Issues.** The attachment hereto shows the calculation of all proceeds of the issuance of Capital Stock or rights in respect of Capital Stock of ~~the Fund, any Fund Subsidiary,~~ the Borrower or any of its Subsidiaries during the Relevant Test Period.

Applicable Margin. The attachment shows that the Applicable Margin has changed to / remains the same as set out below:

All Credit Facilities

Level	Leverage Ratio	Applicable Margin for Floating Rate Loans	Applicable Margin for Libor Loans, Acceptances and Standby Instruments	Applicable Margin for Standby Fee
	: 1	%	%	%

- (g) **Distributable Cash Flow.** The attachment hereto shows the calculation of the Distributable Cash Flow for the Relevant Fiscal Quarter to be \$ _____.¹

Each of the calculations in the attachment hereto demonstrates compliance with the relevant financial tests listed above as at, or for the Relevant Fiscal Quarter.

The undersigned represents, warrants and agrees:

- (a) Each of the representations and warranties deemed to be repeated in Section 11.2 of the Credit Agreement are true, accurate and complete in all respects on and as of the date hereof with the same effect as if such representations and warranties had been made on and as of the date hereof.
- (b) No Default has occurred and is continuing on the date hereof.

The undersigned confirms to and agrees with the Finance Parties, on its own behalf and on behalf of each other Obligor (being duly authorized by each other Obligor to do so), that it remains bound by each of the Loan Obligations expressed to be binding upon it in the Loan Documents and agrees to punctually pay and perform its Loan Obligations in accordance with their respective terms.

¹ Attached as Exhibit A to Schedule 6 is an example for illustrative purposes only of the calculation of the Distributable Cash Flow for the Fiscal Quarter ended September 30, 2007.

DATED this _____ day of _____, _____.

Yours very truly,

CML HEALTHCARE INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

**EXHIBIT A to SCHEDULE 6
FORM OF DISTRIBUTABLE CASH FLOW CALCULATION**

For the 9 months ending September 30, 2010 (in thousands of dollars)

Cash flow from operating activities	
Total capital expenditure as per consolidated statements of cash flows	
Expenditures relating to the acquisition of licenses	
Restrictions on distributions arising from	
Restrictive financial covenants	
Existence of a non-controlling interest in a subsidiary	
Standardized Distributable Cash (per GAAP)	
Normalizing adjustments to non-cash working capital items	
One time capital expenditures	
Changes in capital expenditure notional reserve	
Capital lease payments	
Part V1.1 tax paid	
Add back payments to non-controlling interest	
Cash available for distributions	
Non-recurring revenue	
Distributable Cash Flow	

**SCHEDULE 7
FORM OF LOAN TRANSFER AGREEMENT**

LOAN TRANSFER AGREEMENT

THIS AGREEMENT is made the _____ day of _____.

AMONG:



(hereinafter called the "**Transferor**")

- and -



(hereinafter called the "**Transferee**")

- and -

THE TORONTO-DOMINION BANK

acting as administration agent for and on behalf of itself and the Lenders with respect to the Credit Facilities and the Loan Documents

(hereinafter called the "**Agent**")

RECITALS:

A. CML HealthCare Inc., as Borrower, the Institutions named therein as Lenders, and The Toronto-Dominion Bank, as Administration Agent, entered into an amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "**Credit Agreement**"). Words defined or given extended meanings in the Credit Agreement (and not otherwise defined herein) are used with the same respective defined or extended meanings in this loan transfer agreement.

The Transferor is a Lender under the Credit Agreement with the following Commitments determined before the transfer contemplated hereby takes effect:

Revolver Commitment	Swing Line Commitment	CAD Term Commitment	USD Term Commitment
CAD _____	CAD _____	CAD _____	USD _____

The Transferor has agreed to transfer to the Transferee the amounts of its Commitments (the "**Relevant Transfer Amounts**") and/or the proportions of its Commitments (the "**Relevant Transfer Percentages**") indicated in the table below:

Credit Facility	Relevant Transfer Amount	Relevant Transfer Percentage
Revolver Facility	CAD _____	_____ %
Swing Line	CAD _____	_____ %
CAD Term Facility	CAD _____	_____ %
USD Term Facility	USD _____	_____ %

The portion of the Transferor's Commitments so transferred is hereinafter called the "**Transferred Commitments**".

WITNESSETH THAT in consideration of the mutual covenants herein contained and other valuable consideration now paid by each party hereto, the one to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Transferred Commitment.** The Transferor confirms to each of the Transferee and the other parties to the Credit Agreement that the Transferred Commitments relate to the Relevant Transfer Amounts and Relevant Transfer Percentages of its Transferred Commitments (including the corresponding percentage of each outstanding Advance under each such portion of its respective Transferred Commitments).
- Transfer.** As of and from _____, _____ or such other date as the Agent may agree upon with the Transferor and Transferee (herein called the "**Effective Date**") and subject to the terms and conditions herein contained:
 - the Transferee assumes obligations identical to the obligations of the Transferor under the Credit Agreement arising on or after the Effective Date in relation to the Transferred Commitments (herein called the "**Transferred Obligations**") and agrees to perform and be responsible for such obligations as if the Transferee were named in the Credit Agreement and the other Loan Documents to which the Transferor is party as an original party in substitution for the Transferor or its predecessor by amalgamation or merger or in title, as applicable, in respect of the Transferred Obligations;
 - the Agent on its own behalf and on behalf of each of the Finance Parties other than the Transferor (herein called the "**Other Finance Parties**") hereby releases and forever discharges the Transferor of and from any and all claims, losses and expenses and obligations arising on or after the Effective Date under, by reason of, or in connection with the Transferred Obligations;

- (c) the Agent on its own behalf and on behalf of each of the Other Finance Parties acknowledges and agrees that, except as otherwise provided in Section 3 of this loan transfer agreement, the Transferee is hereby assigned and entitled to rights identical to the rights of the Transferor under the Credit Agreement existing on or arising after the Effective Date in relation to the Transferred Commitments (herein called the “**Transferred Rights**”); and
- (d) the Transferor hereby releases and forever discharges each of the Agent and the Other Finance Parties of and from any and all claims, losses and expenses and obligations arising after the Effective Date under, by reason of, or in connection with the Transferred Rights or the Transferred Obligations.

3. **Transitional Provisions.** Subject to the terms and conditions contained herein:

- (a) any payments due and payable by the Borrower on or before the Effective Date in respect of the Transferred Commitments; and
- (b) any payments due and payable by the Borrower after the Effective Date, but payable in respect of the Transferor’s Rateable Share in any Libor Loan or issue of Acceptances outstanding on the Effective Date,

shall, upon receipt by the Agent, be paid to the Transferor. For certainty, the Transferee acknowledges that its Rateable Share in Advances by way of Libor Loans and issues of Acceptances outstanding under the Credit Facilities as at the Effective Date will only take effect on the Period End Dates for those Libor Loans and issues of Acceptances.

4. **Payments Between Transferor and Transferee.** Any payments between the Transferor and Transferee required to be made in relation to this loan transfer agreement (including any transitional payments in relation to matters referred to in paragraph 3 above) are strictly a matter as between the Transferor and Transferee and shall, as between the Borrower, the Agent and the Other Finance Parties, on the one hand, and the Transferor and Transferee on the other hand, be deemed to have been paid.

5. **Copy to the Borrower.** Each of the Transferor and Transferee hereby authorizes the Agent to provide a signed copy of this loan transfer agreement to the Borrower in acceptance of the offer contained in the Credit Agreement of the Borrower to the Transferee to become a party to the Credit Agreement in respect of the Transferred Commitments. Subject to the consent of the Borrower to the assignment contemplated hereby if such consent is required by Subsection 15.10.4, upon receipt by the Borrower of a signed copy of this loan transfer agreement, the provisions of Subsection 15.10.4 of the Credit Agreement in respect of the Transferred Participation shall become effective and be binding upon all parties to the Credit Agreement.

6. **Power of Attorney.** The Transferee irrevocably appoints, authorizes and directs the Agent, as the attorney and agent of the Transferee, with full power of substitution and delegation, to complete, execute and deliver on behalf of the Lenders, including the Transferee, each Loan Document to be executed by the Agent on behalf of the Lenders, and each agreement, document or instrument to be executed by the Agent on behalf of the

Lenders pursuant to each Loan Document, and to take such action on behalf of the Lenders as may be authorized or directed pursuant to any such Loan Document, subject in each case to the terms and conditions of Article 14 of the Credit Agreement.

7. **Interpretation.** This loan transfer agreement shall be governed by, and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules, and shall be construed as supplemental to and form part of the Credit Agreement. Transmission of a copy of an executed signature page of this loan transfer agreement by any party hereto to the other parties hereto by facsimile transmission or by e-mail in pdf format, or posting a copy of a signature page of this loan transfer agreement signed by any party hereto on the internet website designated by the Agent under Subsection 14.23.2 of the Credit Agreement, shall be as effective as delivery to the other parties hereto of a manually executed counterpart hereof.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

as Transferor

By: _____
Authorized Signatory

as Transferee

By: _____
Authorized Signatory

THE TORONTO-DOMINION BANK
as Agent

By: _____
Authorized Signatory

ACCEPTANCE¹

By its execution and delivery of this Acceptance, the Borrower consents to the assignment and transfer recorded above, acknowledges and agrees to the provisions recorded above, and confirms its agreement to the provisions of Subsection 15.10.4 of the Credit Agreement with respect to such assignment and transfer.

CML HEALTHCARE INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

¹ Applicable only prior to the occurrence of an Event of Default

**SCHEDULE 8
EXISTING LIENS**

I. ONTARIO

1. PERSONAL PROPERTY SECURITY ACT (Ontario)

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
1. Canon Canada Inc. ¹	CML Healthcare Inc	666032319 - 20101122 1050 1529 4982 (2 years)	Equipment, Other		
2. Beckman Coulter Canada Inc. ¹	CML Health Care Incorporated (sic)	665890767 - 20101115 1736 2980 0296 (5 years)	Consumer Goods, Inventory, Equipment, Accounts, Other, Amount Secured: \$362,396	2 units of AU5421-02, chemistry analyzer AU5400 2U, Proservice, America, 210V, serial number 9111361 and 9121367, 2 units of M255-OPA12, ISE unit, 2 Flowcell, serial number 0010526 and 9110513, 4 units or Remisol advance server, serial number G3DMH4J, 73DMH4J, 8SS4H4J and all parts and accessories thereto and replacement and all substitutions for such goods.	
3. CBSC Capital Inc. Canon Canada Inc. ¹	CML Healthcare Inc.	665523954 - 20101029 1527 1530 7617 (2 years)	Equipment, Other		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
4. Beckman Coulter Canada Inc ¹	CML Health Care Incorporated (sic)	664797159 - 20100929 1532 2980 0284 (5 years)	Equipment, Amount Secured: \$1,141,439	8 units of Unicel DXI 800 access Immuno Analy serial number 602009, 602016, 602002, 602005, 602017, 602018, 602048, 602045 and all parts and accessories thereto and accession and all replacements of (sic) substitutions for such goods.	Amended by 20101006 0958 2980 0287 Amendment to change the amount secured
5. Beckman Coulter Canada Inc ¹	CML Health Care Inc (sic)	663331563 - 20100729 1528 2980 0267 (3 years)	Equipment, Amount Secured: \$245,361	2 units TN, LH780 analytical station serial number AS27208 and AS27210, 2 units TN, LH750 slidemaker serial number AS24058 and AS24063, TN, LH750 slide stainer serial number AS23050 and all parts and accessories thereto and accession and all replacements or substitutions for such goods.	Amended by 20100917 1007 2980 0276 Amendment to replace the general collateral description
6. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	656297046 - 20090915 1701 1462 8518 (5 years)	Equipment, Motor Vehicles, 2009 Kia Rondo, VIN listed		
7. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	656297055 - 20090915 1701 1462 8519 (5 years)	Equipment, Motor Vehicles, 2009 Kia Rondo, VIN listed		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
8. CBSC Capital Inc. ¹	CML Healthcare Inc	651569049 - 20090217 1946 1531 8667 (2 years)	Equipment, Other		
9. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	648032904 - 20080826 1710 1462 5224 (5 years)	Equipment, Motor Vehicles, 2008 Chevrolet Uplander, VIN listed		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
10. AGFA Finance Inc. ¹	CML Healthcare Inc. (nwo addresses listed)	643474179 - 20080319 1123 1902 5952 (5 years)	Equipment, Other	Impax 6 radiologist viewer softwares, Impax diagnostic workstations, ADC CR 25, computed radiology package and accessories ... the above listed property and related items as more fully set forth on lease by and between debtor/lessee and AGFA Finance Inc, (sic) and all after acquired property purchased or leased from secured party/lessor pertaining thereto. This filing is being made in the event that contrary to the party's understanding (sic) and intent, the lease of the described system is held to be a secured transaction under the Uniform Commercial Code. This filing is made in accordance with Article 9, section 408 and/or revised Article 9, section 505 of the UCC whichever is currently applicable in this jurisdiction	Amended by 20090210 1212 1901 6641 Amendment to correct one of the addresses of the debtor

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
11. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	642997161 - 20080228 1409 1462 6313 (5 years)	Equipment, Motor Vehicles, Amount Secured: \$21,271, 2008 Kia Rondo, VIN listed		
12. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	642997179 - 20080228 1409 1462 6314 (5 years)	Equipment, Motor Vehicles, Amount Secured: \$21,271, 2008 Kia Rondo, VIN listed		
13. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	642997206 - 20080228 1409 1462 6317 (5 years)	Equipment, Motor Vehicles, Amount Secured: \$21,271, 2008 Kia Rondo, VIN listed		
14. Beckman Coulter Canada Inc. ¹	CML Health Care Incorporated (<i>sic</i>)	641980287 - 20080114 0926 2980 0068 (5 years)	Equipment, Amount Secured: \$72,908	Image 800 (NI) – Serial Number 8434 – and all parts and accessories thereto and accession and all replacements or substitutions for such goods.	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
15. Beckman Coulter Canada Inc. ¹	CML Health Care Inc. (sic)	638221311 - 20070816 1013 2980 0004 (7 years)	Equipment, Amount Secured: \$955,356	5 x LH780 Hematology Serial # - AL18076 - AL19096 - AL24106 - AL24112 - AL30122 5 x Slidemaker Serial # - AL25091 - AL25093 - AL25098 - AL28101 - AL28105 4 x Slide Stainers Serial # - AL24069 - AL24071 - AL25074 - AL29084 and all parts thereto and accession and replacement or substitutions for such good.	
16. Beckman Coulter Canada Inc. ¹	CML Health Care Inc (sic)	637714215 - 20070730 1331 1322 1911 (7 years)	Equipment, Amount Secured: \$169,436	1 x LH780 Hematology S/N #AL23102 1 x Slidemaker S/N #AL24088 and all parts (sic) and accessories thereto and accession and all replacement or substitutions for such goods.	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
17. Beckman Coulter Canada Inc ¹	CML Health Care Incorporated (sic)	636397173 - 20070615 1711 1322 1900 (6 years)	Equipment, Amount Secured: \$577,334	3 - LH780 Hematology Serial # AL15065, # AL18081, # AL19082 4 - Slidemakers Serial # AL20072, # AL19063, # AL20073, # AL19069 1 - Slidestainer Serial # AL20056 and all parts and accessories thereto and accession and replacement or substitutions for such goods	
18. Beckman Coulter Canada Inc ¹	CML Health Care Incorporated (sic)	629259678 - 20060927 1033 1322 1795 (5 years)	Equipment, Amount Secured: \$208,092	Unicel DXI800 Immuno Analyzer Serial # 600968, DXI800 System Software Kit Serial (sic) # 617708 and all parts and accessories thereto and accession and all replacement or substitutions for such goods.	
19. Jim Pattison Industries Ltd. ¹	CML Healthcare Inc.	627358014 - 20060725 1404 1462 0699 (5 years)	Equipment, Motor Vehicles, Amount Secured: \$18,186 2006 Ford Focus VIN listed		

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
20. Roche Diagnostics, a division of Hoffmann-La Roche Limited ²	CML Healthcare Inc.	612621576 - 20050211 1223 1590 4079 (7 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles	This registration is made in respect of collateral described in Invoice 94339272 dated July 30, 2004 (referencing agreement no. U-2004-1188) being 1 Roche Amplicor Product No. 21045156001 1045156 Lot 395987, 1 UPS** Product No. 04053176001 0N1300 Lot 04197667, and all accessories, attachments and instruments in connection therewith provided that all of same are subject to change.	

Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	General Collateral Description	Amendments / Assignments / Discharges / Renewals / Transfers / Subordinations
21. CIT Financial Ltd. ³	Pharma Medica Research Inc.	885977586 - 20020801 1435 1616 5094 (5 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles		<p>Amended by <u>20030508</u> <u>1425 1616 1830</u></p> <p>Amendment to reflect a change in the name of the debtor from "Canadian Medical Laboratories Limited" to "CML Healthcare Inc.".</p> <p>Transferred by <u>20060717</u> <u>1640 1616 6093</u></p> <p>Transferor: CML Healthcare Inc.</p> <p>Transferee: Pharma Medica Research Inc.</p> <p>Renewed by <u>20061204</u> <u>1440 1616 1109</u></p> <p>7 years</p>

II. BRITISH COLUMBIA

1. PERSONAL PROPERTY SECURITY ACT (British Columbia)

Secured Party(ies)	Debtor(s)	Registration Number (Registration Period)	General Collateral Description	Amendments / Assignments / Discharges / Renewals Transfers / Subordinations
1. CSBC Capital Inc. ¹	CML Healthcare Inc	Regn No.: 832767E Date: Feb. 17, 2009 Expiry: Feb. 17, 2011	<p><u>General Collateral:</u> All goods supplied by the secured party to the debtor, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements to the foregoing. Proceeds: goods, chattel paper, securities, money, crops, licences and intangibles</p>	
2. Canon Canada Inc. CSBC Capital Inc. ¹	CML Healthcare Inc.	Regn No.: 839210F Date: Oct. 29, 2010 Expiry: Oct. 29, 2012	<p><u>General Collateral:</u> All goods supplied by the secured party to the debtor, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements to the foregoing. Proceeds: goods, chattel paper, securities, money, crops, licences and intangibles. Office technology copiers, digital</p>	

1. The Liens perfected by registrations numbered 1-19 in Ontario and 1-2 in British Columbia above constitute Permitted Liens referred to in paragraph (n) of the definition of "Permitted Liens" only to the extent they perfect Liens on Collateral described in the Collateral Classifications and General Collateral Descriptions set out opposite them above and only to the extent of any dollar amount set out therein.
2. The Liens perfected by registration number 20 above constitute Permitted Liens referred to in paragraph (n) of the definition of "Permitted Liens" only to the extent of the Collateral described in the limitation of interest letter dated July 17, 2007 executed by Roche Diagnostics, a division of Hoffman-La-Roche Limited in favour of The Toronto-Dominion Bank and CML Healthcare Inc.
3. The Liens perfected by registration number 21 above constitute Permitted Liens referred to in paragraph (n) of the definition of "Permitted Liens" only to the extent they perfect Liens in Collateral described in the acknowledgment dated July 31, 2007 executed by CIT Finance Ltd. in favour of The Toronto-Dominion Bank and CML Healthcare Inc.

SCHEDULE 9
AUDITED TAX RETURNS

1. U. S. tax years currently under audit by IRS:
 - January 1, 2006 to December 31, 2006
 - January 1, 2007 to December 31, 2007
 - January 1, 2008 to February 29, 2008

**SCHEDULE 10
EXISTING DEBT**

1. Capital Leases as follows:

American Radiology Services LLC (US\$)

<u>Vendor</u>	<u>Description</u>	<u>Total</u>
GE Healthcare Financial Services	CT	122,445
GE Healthcare Financial Services	GE Goldseal 1.5T MRI Mobile System	60,677
GE Healthcare Financial Services	GE Discovery ST 4-Slice PET-CT system	89,801
GE Healthcare Financial Services	GE 16-Slice Discovery ST PET-CT system	100,028
GE Healthcare Financial Services	GE Voluson 730 Ultrasound system	32,455
GE Healthcare Financial Services	Phillips iu22 Ultrasound system	33,692
GE Healthcare Financial Services	Phillips iu22 Ultrasound system	33,692
GE Healthcare Financial Services	GE Voluson 730 Ultrasound system	32,455
Commerce Commercial Lease	Philips IU22	88,567
Commerce Commercial Lease	Philips IU22	88,036
Commerce Commercial Lease	Philips IU22	88,036
Commerce Commercial Lease	Philips IU22	104,679
Commerce Commercial Lease	ONI MRI	365,594
Commerce Commercial Lease	GE Logiq 9	108,939
Commerce Commercial Lease	GE Logiq 9	108,939
Commerce Commercial Lease	GE Logiq 9	108,939
Commerce Commercial Lease	GE Logiq 9	108,939
Commerce Commercial Lease	Philips Diamond GI	34,906
Commerce Commercial Lease	Philips Diamond GI	38,612
Commerce Commercial Lease	Philips IU22	109,807
Commerce Commercial Lease	GE Logiq 9	23,361
Siemens Credit Corporation	64 Slice CT	804,662
Siemens Credit Corporation	16 Slice CT	367,765
Siemens Credit Corporation	40 Slice CT	585,948
GE Healthcare Financial Services	MRI/RF Room/Rigging	407,795
GE Healthcare Financial Services	Final Buildout	105,486
GE Healthcare Financial Services	CT & Buildout	196,500
GE Healthcare Financial Services	Misc	67,724
GE Healthcare Financial Services	Spectroscopy Upgrade	33,266
		<u>4,451,744</u>

Calvert Medical Imaging Center (Principal @50%)(US\$)

<u>Vendor</u>	<u>Description</u>	<u>Total</u>
Toshiba America Medical Credit	PET/CT	713,846
Toshiba America Medical Credit	Hologic Digital Mammo	161,394
Toshiba America Medical Credit	Building Construction - Erdman	262,675
Toshiba America Medical Credit	Supplies, Konica, GE	118,122
Toshiba America Medical Credit	MRI	596,148
Calvert Memorial Hospital	Hologic Stereotactic Table	74,590
		<u>1,926,776</u>

Upper Chesapeake Health (Principal @50%)(US\$)

<u>Vendor</u>	<u>Description</u>	<u>Total</u>
Bank of America Leasing	GE - Refurbished Lightspeed CT Scanner	173,011
Bank of America Leasing	Misc. office furniture, Medical equip., Computer equip., Construction costs	1,546,306
		<u>1,719,317</u>

CML Healthcare - Rhode Island LLC (US\$)

<u>Vendor</u>	<u>Description</u>	<u>Total</u>
Philips	Philips - Brilliance 16 Slice CT Scanner	98,836
Philips	Philips - Intera 1.5 MR System	155,035
GE	GE - Logiq 9	47,287
Phillips	Philips - Brilliance 16 Slice CT Scanner	186,948
GE	GE - Logiq 9 BT07	20,517
GE	GE - Logiq 9	77,980
GE	PACS Software	22,470
		<u>609,073</u>

CML Healthcare Inc. (CDNS)

<u>Vendor</u>	<u>Description</u>	<u>Total</u>
Simagen	HEMOGLOBIN ANALYZER	270,363
Siemens	MICROSCAN UNITS	107,733
Siemens II	MICRO BIOLOGY INSTRUMENTS	194,180
Beckman Coulter DXI	ANALYZERS & COMPUTER SYSTEMS	3,087,948
		<u>3,660,224</u>

2. The irrevocable standby letter of credit no. 18107430-00-000 initially dated February 20, 2002, as amended on December 2010, in aggregate amount of US\$85,000 issued by PNC Bank for the benefit of Physician's Health Plan of Maryland, Inc.

**SCHEDULE 11
CONFIRMATION**

TO: The Toronto-Dominion Bank, as Agent
RE: Credit Facilities for CML Healthcare Inc.

Reference is made to a credit agreement dated as of February 22, 2008 among CML Healthcare Inc., as Borrower, the institutions named therein as Lenders, and The Toronto-Dominion Bank, as Agent (the "**Existing Credit Agreement**").

Reference is also made to an amended and restated credit agreement dated as of January 1, 2011 (as changed and in effect from time to time, the "**Credit Agreement**") among CML Healthcare Inc., as Borrower, the institutions named therein as Lenders, and The Toronto-Dominion Bank, as Agent pursuant to which it is proposed that the Existing Credit Agreement be amended and restated in its entirety by the Credit Agreement. All terms and expressions (capitalized or not) used in this Confirmation which are defined or given extended meanings in the Credit Agreement are used in this Confirmation with the same respective defined or extended meanings assigned in the Credit Agreement.

It is a condition precedent to the entry into effect of the amendment and restatement of the Existing Credit Agreement contemplated by the Credit Agreement (the "**Amendment and Restatement**") that each of the undersigned execute this Confirmation in favour of the Finance Parties to confirm the continuing obligations of each of the undersigned to the Finance Parties under the existing Guarantee (the "**Existing Guarantee**").

Accordingly, to induce the Finance Parties to amend and restate the Existing Credit Agreement in the manner contemplated by the Amendment and Restatement as and from the Effective Date, each of the undersigned:

1. Confirms and agrees that the guarantees, postponements and other obligations expressed to be binding on it under or pursuant to the Existing Guarantee shall, except as expressly changed hereby, be unaffected by and shall be binding upon the undersigned and continue in full force and effect, *inter alia*, guaranteeing and securing the Finance Obligations of the Borrower as amended and restated by the Amendment and Restatement, and the execution and delivery of the Credit Agreement and the entry into effect of the Amendment and Restatement shall not in any manner whatsoever reduce, release, discharge, impair or otherwise prejudice or change the rights of the Finance Parties arising under, by reason of or otherwise in respect of such guarantees, postponements and other obligations constituted by the Existing Guarantee, except to the extent expressly amended and restated by the Amendment and Restatement and/or hereby.
2. Ratifies and confirms its obligations under the Existing Guarantee and its other Finance Obligations and confirms and agrees that the Existing Guarantee and its other Finance Obligations continue in full force and effect without change, except to the extent

expressly changed by the Amendment and Restatement and/or hereby, and is binding upon the undersigned and the Existing Guarantee shall guarantee the obligations expressed to be guaranteed thereby as contemplated by this Confirmation, including the Finance Obligations (as expressly amended by the Amendment and Restatement) of the Borrower.

3. Confirms and agrees that each reference, if any, in the Existing Guarantee to the Existing Credit Agreement shall be construed as a reference to the Credit Agreement.
4. Agrees with the Finance Parties to extend the limitation period under the *Limitations Act, 2002* (Ontario), other than the one established by Section 15 of that Act, applicable to this Confirmation and any claim hereunder to six (6) years.

This Confirmation shall be governed by, and construed and interpreted in accordance with, the laws in force in the Province of Ontario, including the federal laws of Canada applicable therein, but excluding choice of law rules.

This Confirmation may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this Confirmation to produce or account for more than one such counterpart. Each of the undersigned executing this Confirmation shall be bound by this Confirmation when it is so executed and delivered by it whether or not any other Obligor so executes and delivers a counterpart hereof.

Transmission of a copy of an executed signature page of this Confirmation (including any change to this Confirmation) by facsimile transmission or e-mail in pdf format to each of the addressees hereof or posting a copy of an executed signature page of this Confirmation on the internet website designated by the Agent under Section 15.8 of the Credit Agreement, shall be as effective as delivery of an original manually executed counterpart hereof to each of the addressees hereof.

[The remainder of this page is intentionally left blank.]

TO WITNESS this Confirmation, each of the undersigned has caused it to be duly executed and delivered as of the 1st day of January, 2011.

AMERICAN RADIOLOGY SERVICES, LLC

Per: _____

Name:

Title:

**AMERICAN RADIOLOGY SERVICES OF
DELAWARE, INC.**

Per: _____

Name:

Title:

RAVEN HOLDINGS US, INC.

Per: _____

Name:

Title:

**RADIOLOGY ALLIANCE DELIVERY
SYSTEM, LLC**

Per: _____

Name:

Title: