

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

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

APPLICATION RECORD
(Application returnable June 27, 2016)

(VOLUME I OF II)

June 24, 2016

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-and-

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**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE
(Income Tax, PST)**

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SUPERIOR COURT OF JUSTICE
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

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**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
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NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario, on June 27, 2016, at 10:00 a.m. or as soon after that time as the matter may be heard, in respect of the appointment of an interim receiver, and then for a second hearing on a date and at a time to be set by the Court, in respect of the appointment of a receiver.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, whether the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS

APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 24, 2016

Issued by: _____


Local Registrar
A. Anissimova
Registrar

Address of 330 University Avenue
court office: 7th Floor
Toronto, ON M5G 1R7

TO: ALL THE PARTIES ON THE ATTACHED SERVICE LIST

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**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE
(Income Tax, PST)**

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Attention: Kevin J. O'Hara

Tel: (905) 433-6934
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Email: kevin.ohara@ontario.ca

APPLICATION

1. **THE APPLICANT, SALUS CAPITAL PARTNERS, LLC (“SALUS”), MAKES APPLICATION FOR:**

- (a) if necessary, an order abridging the time for service and filing of this notice of application and the application record or, in the alternative, dispensing with and/or validating service of same;
- (b) an *ex parte* order appointing Richter Advisory Group Inc. (“**Richter**”) as interim receiver (in such capacity, the “**Interim Receiver**”), without security, of all the assets, undertakings and properties of Forever Jewellery Inc. (“**FJI**”);
- (c) an order appointing Richter as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties of FJI;
- (d) its costs of this application; and
- (e) such further and other relief as is just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

THE PARTIES

- (a) FJI is a privately-owned Ontario corporation, which operates a wholesale jewellery business;
- (b) FJI’s inventory consists largely of gemstones, precious metals, and products of both, which inventory is extremely portable and largely untraceable;
- (c) Salus is the senior secured creditor of FJI, J.S.N. Jewellery Inc. (“**JSN**”), J.S.N. Jewellery UK Limited (“**JSN UK**”), GMJ Corp. (“**GMJ**”), Ben Moss Jewellers Western Canada Ltd. (“**Ben Moss**” and, together with the JSN, JSN UK, and GMJ, the “**Borrowers**”), 2373138 Ontario Inc. (“**2373**”), and Always & Forever Family Collection Incorporated (“**AFFC**”), a secured creditor of P.M.R. Inc. (“**PMR**”) and a creditor of Joseph Shilon (together with 2373, FJI, AFFC and PMR the “**Guarantors**” and, the Guarantors together with the Borrowers, the “**Obligors**”);
- (d) a search of registrations against FJI made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”), revealed no registrations other than one in favour of Salus;

SALUS' LOAN AND SECURITY

- (e) Salus and the Obligors (other than AFFC and PMR) are parties to a credit agreement dated July 18, 2013 (as amended, replaced, restated, or supplemented from time to time, the "**Credit Agreement**");
- (f) pursuant to the Credit Agreement, Salus has supplied the Borrowers with:
 - (i) a revolving operating facility in the maximum amount of CDN\$50,000,000 or its US\$ equivalent, subject to sufficient collateral borrowing base (the "**Revolving Credit Facility**");
 - (ii) a CDN\$7,000,000 term loan facility (the "**Term A Facility**");
 - (iii) a CDN\$13,000,000 term loan facility (the "**Term B Facility**"); and
 - (iv) a US\$3,500,000 term loan facility provided for in the First Amendment (the "**Term C Facility**"),

(collectively, the "**Credit Facilities**"), which Credit Facilities were to be used: (a) to finance JSN's acquisition of Ben Moss and to fund certain expenses incurred in connection with such acquisition; (b) to refinance the Borrowers' former credit and/or leasing facilities; (c) to purchase working capital assets in the ordinary course, including inventory and equipment; (d) for capital expenditures; (e) for general corporate purposes of the Borrowers; and (f), in the case of the Term C Facility, to pay down the Revolving Credit Facility.
- (g) by a Guarantee Agreement dated as of July 18, 2013 (the "**FJI Guarantee**"), FJI guaranteed all present and future obligations under the Credit Agreement, limited to an amount not exceeding the sum of all amounts due and payable by FJI to JSN (the "**FJI Guaranteed Obligations**");
- (h) as security for their obligations to Salus, including FJI's obligations to Salus pursuant to the FJI Guarantee, FJI and the other Canadian Obligors provided security (the "**Security**") in the form of, among other things, a Canadian General Security Agreement in favour of Salus dated July 18, 2013 (the "**GSA**"), registration in respect of which was made pursuant to the PPSA;

INITIAL DEFAULTS AND FORBEARANCE

- (i) as at May 12, 2016, the Borrowers were in breach of certain of their covenants under the Credit Agreement, which breaches constituted Events of Default as defined in the Credit Agreement. These Events of Default included, without limitation,
 - (i) the Borrowers' inability to repay the Permitted Overadvances (as defined in the Credit Agreement);
 - (ii) the breach of the Borrowers' collateral coverage ratio covenant under the Credit Agreement; and
 - (iii) Ben Moss' advice to Salus that it intended to seek an order pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") granting it protection from its creditors, and seeking the appointment of Alvarez & Marsal Canada Inc. ("A&M") as monitor;

- (j) also on May 12, 2016, JSN, Ben Moss and certain other Obligors, including PMR, appointed FAAN Advisors Group Inc. to serve as their chief restructuring officer (the "CRO"), and delegated the authority to direct their operations and management, stripping the same powers from the owner of JSN and its affiliates, Joseph Shilon, who happens also to be the father of Gila Shilon, the owner of FJI;

- (k) by letter dated May 16, 2016 (the "**Borrowers' Demand**"), Salus demanded repayment of the amounts then outstanding under the Credit Facilities, together with all fees arising under the Credit Agreement for which the Borrowers are responsible, any and all costs and expenses incurred by Salus, including, without limitation, Salus's legal and other professional fees, and the face amounts of any outstanding letters of credit owing under the Credit Agreement;

- (l) by letter dated May 16, 2016, Salus also made formal demand for payment on FJI. In accordance with the FJI Guarantee, Salus demanded repayment of the FJI Guaranteed Obligations, plus interest (the "**Guarantor Demand**" and, together with the Borrowers' Demand, the "**Demands**");

- (m) the Demands were accompanied by Notices of Intention to Enforce Security (the “**BIA Notices**”) pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);
- (n) subsequent to the issuance of the Demands and BIA Notices on May 16, 2016, Salus and the Obligors entered into an accommodation agreement also dated May 16, 2016 (the “**Accommodation Agreement**”), pursuant to which Salus agreed to forbear from enforcing the GSA and to continue to fund the Borrowers other than Ben Moss. In connection with the Accommodation Agreement, Salus and the Obligors also entered into a Super Priority DIP Credit Agreement dated May 16, 2016 (the “**DIP Credit Agreement**”), with only Ben Moss as borrower, pursuant to which Salus agreed to provide overadvance funding to Ben Moss;
- (o) at section 10.22 of the DIP Credit Agreement, FJI confirmed that the FJI Guarantee (as secured by the GSA), guaranteed the Borrowers’ obligations to Salus pursuant to both the DIP Credit Agreement and the Credit Agreement;
- (p) on May 18, 2016, Ben Moss was granted protection under the CCAA pursuant to an initial order (the “**Initial CCAA Order**”) which, among other things, appointed A&M as the monitor in respect of Ben Moss (in such capacity, the “**Monitor**”). The Initial CCAA Order was amended and restated at a comeback hearing held May 26, 2016;

SUBSEQUENT DEFAULTS

- (q) as a condition of Salus’ continued forbearance, the Accommodation Agreement required FJI to return to JSN all the JSN inventory in its possession by no later than May 17, 2016. FJI continues to retain approximately \$500,000 of JSN’s inventory which it refuses to return, which refusal constitutes a Forbearance Termination Event under the Accommodation Agreement;
- (r) in addition to the foregoing, the following Forbearance Termination Events have occurred:
 - (i) FJI received a payment of \$174,418.89 from PMR on May 16, 2016, for no consideration and without the authorization of the CRO, which, despite demands, FJI has refused to repay;

- (ii) Joseph Shilon and Gila Shilon (the owner of FJI) have refused to respond to requests for information to which the Monitor is entitled pursuant the Initial CCAA Order;
- (iii) the Borrowers have failed to comply with and operate their businesses in a manner consistent with the Cash Flows (as defined in the Accommodation Agreement);
- (iv) the Borrowers have failed to repay the Permitted Overadvance (as defined in the Accommodation Agreement) in accordance with the Cash Flows;
- (v) Joseph Shilon has removed and/or destroyed molds integral to JSN's business, without any authority or authorization from the CRO to do so;
- (vi) Joseph Shilon instructed JSN's employees not to attend work on Monday, June 20, 2016, without any authority or authorization from the CRO to do so; and
- (vii) FJI and Joseph Shilon refused to sign amendments to the Accommodation Agreement and the DIP Credit Agreement proposed by Salus, which amendments would have benefited Ben Moss by addressing a projected shortfall in credit availability under the DIP Credit Agreement;

GUARANTEED OBLIGATIONS

- (s) as of June 20, 2016, the Obligors were indebted to Salus pursuant to the Credit Facilities, the DIP Credit Agreement, and/or their guarantees, plus interest, legal and bank fees and costs in the amounts of CDN\$30,498,216.98 and US\$25,153,645.09 (subject to limitations on the guarantees of certain Guarantors);
- (t) as of June 18, 2016, FJI was indebted to Salus, pursuant to the FJI Guarantee, in the amount of CDN\$1.9 million, such amount forming the Guaranteed Obligations as of that date;

APPOINTMENT OF THE INTERIM RECEIVER AND THE RECEIVER

- (u) given the portable and untraceable nature of the collateral and given the disdain FJI has shown for its obligations under contract and under prior order of this Court, the appointment of the Interim Receiver on an *ex parte* basis is urgently needed to preserve

and protect the assets of FJI and the interests of its secured creditor, Salus, and the full powers of the Receiver will be required soon thereafter;

- (v) pursuant to the GSA, Salus has the right, upon an event of default, to seek the court-appointment of a receiver over any or all of the Obligors party thereto;
- (w) pursuant to the FJI Guarantee, FJI's liability thereunder is not diminished by any extension or increase to the Borrowers' obligations under the Credit Agreement or the DIP Credit agreement, nor by any failure by Salus to pursue remedies against other Obligors;
- (x) pursuant to the Accommodation Agreement, Salus is required to give only one day's notice prior to taking enforcement action upon the occurrence of a Forbearance Termination Event;
- (y) by notice dated and served on June 21, 2016, Salus provided FJI and Joseph Shilon with notice of the occurrence of a Forbearance Termination Event, and of its intention to take Lender Enforcement Action (as defined in the Accommodation Agreement) as against them;
- (z) pursuant to the Accommodation Agreement, FJI agreed not to oppose the court-appointment of a receiver upon the occurrence of a Forbearance Termination Event;
- (aa) Salus has, at all times, acted in good faith and with considerable patience towards the Borrowers, including by continuing to provide overadvances in the face of mounting Events of Default;
- (bb) FJI has failed to honour its obligations to Salus pursuant to the Credit Agreement, DIP Credit Agreement and the Accommodation Agreement, and has ignored its obligations under the Initial CCAA Order;
- (cc) FJI is insolvent and has failed to fulfill all its obligations to Salus and other stakeholders;
- (dd) in the circumstances, it is just and equitable that first an interim receiver and then a receiver be appointed;
- (ee) Richter is a licensed trustee in bankruptcy and is familiar with FJI's circumstances and its arrangements with Salus;

- (ff) Richter has consented to being appointed both as the Interim Receiver and as the Receiver;
- (gg) the other grounds set out in the affidavit of Andrew Prunier, sworn June 23, 2016 (the "Prunier Affidavit");
- (hh) subsection 243(1) of the BIA;
- (ii) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (jj) rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (kk) such further grounds as are required and this Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the Prunier Affidavit and all the exhibits attached thereto;
- (b) the consent of Richter to act as the Interim Receiver and the Receiver; and
- (c) such other material as is required and this Court may permit.

Date of Issue: June 24, 2016

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Lawyers for Salus Capital Partners, LLC

SALUS CAPITAL PARTNERS, LLC

and FOREVER JEWELLERY INC.

(Short title of proceeding)

Court File No. CV-16- 11439 -00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF APPLICATION

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Lawyers for Salus Capital Partners, LLC

TAB 2

Court File No. CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 27 TH
)	
JUSTICE NEWBOULD)	DAY OF JUNE, 2016

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Interim Receiver)**

THIS APPLICATION made by Salus Capital Partners, LLC ("**Salus**") for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Richter Advisory Group Inc. ("**Richter**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Forever Jewellery Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Prunier sworn June 23, 2016 and the exhibits thereto and on hearing the submissions of counsel for Salus and counsel for the Interim Receiver and no one else appearing and on reading the consent of Richter to act as the Interim Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that, pursuant to section 47(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

INTERIM RECEIVER'S POWERS

2. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any proceeds, receipts and disbursements arising out of or from the Property;
- (b) to preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocation of Property to safeguard it, the engaging of independent security personnel and the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;

- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable and including, without limitation, the Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Ben Moss Jewellers Western Canada Ltd. and Faan Advisors Group Inc. in its capacity as Chief Restructuring Officer of JSN Jewellery Inc. and its affiliates;
- (e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

3. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

4. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the

Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

6. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or

in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

9. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

10. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment

practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

11. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

14. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim

Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ''.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtor.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. **THIS COURT ORDERS** that the Salus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Salus' security or, if not so provided by the Salus' security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Richter Advisory Group Inc., the interim receiver (the "Interim Receiver") of the assets, undertakings and properties of Forever Jewellery Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 27th day of June, 2016 (the "Order") made in an action having Court file number CV-16-~~***~~-00CL, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ~~***~~ per cent above the prime commercial lending rate of Bank of ~~***~~ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2016.

RICHTER ADVISORY GROUP INC., solely
in its capacity as Interim Receiver of the
Property, and not in its personal capacity

Per: _____

Name:

Title:

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

Court File No. CV-16-11439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

INTERIM RECEIVERSHIP ORDER

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Lawyers for Salus Capital Partners, LLC

TAB 3

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. ——— CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ——— MR.) WEEKDAY MONDAY, THE #27TH
JUSTICE ——— NEWBOULD) DAY OF MONTH JUNE, 20YR 2016

PLAINTIFF[†]

Plaintiff

— and —

DEFENDANT

Defendant

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED**

[†] The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

ORDER
(appointing Interim Receiver)

~~THIS MOTION~~APPLICATION made by the ~~Plaintiff~~²Salus Capital Partners, LLC ("Salus") for an Order pursuant to section 24347(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ as Richter Advisory Group Inc. ("Richter") as interim receiver ~~[and manager]~~ (in such ~~capacities~~capacity, the "Interim Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~Forever Jewellery Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~Andrew Prunier sworn ~~[DATE]~~June 23, 2016 and the ~~Exhibits~~exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~Salus and counsel for the Interim Receiver and no one else appearing for [NAME] although ~~duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~ and on reading the consent of ~~[RECEIVER'S NAME]~~Richter to act as the Interim Receiver,

SERVICE

~~1. — THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof. —~~

APPOINTMENT

~~1. 2. — THIS COURT ORDERS that, pursuant to section 24347(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~Richter is hereby appointed Interim Receiver, without~~

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³ If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

INTERIM RECEIVER'S POWERS

2. ~~3.~~ **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and ~~any and~~ all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to ~~receive,~~ preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the ~~relocating~~relocation of Property to safeguard it, the engaging of independent security personnel, ~~and~~ the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- ~~(c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~
- ~~(c)~~ (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;

- ~~(e) — to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~
- ~~(f) — to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~
- ~~(g) — to settle, extend or compromise any indebtedness owing to the Debtor;~~
- ~~(h) — to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;~~
- ~~(i) — to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;~~
- ~~(j) — to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;~~
- ~~(k) — to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;~~

⁴ This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

~~(i) without the approval of this Court in respect of any transaction not exceeding \$ _____, provided that the aggregate consideration for all such transactions does not exceed \$ _____; and~~

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;~~

~~and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.~~

~~(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;~~

~~(d) (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable Interim Receiver deems advisable and including, without limitation, the Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Ben Moss Jewellers Western Canada Ltd. and Faan Advisors Group Inc. in its capacity as Chief Restructuring Officer of JSN Jewellery Inc. and its affiliates;~~

~~(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;~~

⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

- ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (e) ~~(+)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

3. ~~4.~~ **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

4. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. ~~6-~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court~~

~~upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

6. ~~8.~~ **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

9. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

10. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

11. ~~13.~~ **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. ~~14.~~ **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically

agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

~~15. THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything

done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

14. ~~17.~~ **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

15. ~~18.~~ **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

16. ~~19.~~ **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

18. ~~21.~~ **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. ~~22.~~ **THIS COURT ORDERS** that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. ~~23.~~ **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Interim Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

21. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

22. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

23. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. ~~27.~~ **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtor.

26. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States

to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

27. ~~30.~~ **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. ~~31.~~ **THIS COURT ORDERS** that the Plaintiff Salus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's Salus' security or, if not so provided by the Plaintiff's Salus' security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [~~RECEIVER'S NAME~~] Richter Advisory Group Inc., the interim receiver (the "**Interim Receiver**") of the assets, undertakings and properties [~~DEBTOR'S NAME~~] of Forever Jewellery Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 27th day of June, 202016 (the "**Order**") made in an action having Court file number CL number CV-16-~~*~~-00CL, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][~~monthly not in advance on the _____ day of each month~~] after the date hereof at a notional rate per annum equal to the rate of _____ ~~*~~ per cent above the prime commercial lending rate of Bank of _____ ~~*~~ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2016, 2016.

~~[RECEIVER'S NAME]~~ **RICHTER ADVISORY GROUP INC.**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

26520979.1

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

Court File No. CV-16-11439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

INTERIM RECEIVERSHIP ORDER

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Lawyers for Salus Capital Partners, LLC

26520983.3

Document comparison by Workshare Compare on June-24-16 1:50:26 PM

Input:	
Document 1 ID	interwovenSite://AB-WS1/CM/26520979/1
Description	#26520979v1<CM> - Model receivership-order-EN (2)
Document 2 ID	interwovenSite://AB-WS1/CM/26520983/3
Description	#26520983v3<CM> - Interim Receivership Order (FJI)
Rendering set	standard

Legend:	
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Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	170
Deletions	125
Moved from	1
Moved to	1
Style change	0

TAB 4

Court File No. CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 27TH
)
JUSTICE NEWBOULD) DAY OF JUNE, 2016

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Receiver)**

THIS APPLICATION made by Salus Capital Partners, LLC ("**Salus**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Richter Advisory Group Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Forever Jewellery Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Prunier sworn June 23, 2016 and the exhibits thereto, upon reading the First Report of Richter in its capacity as Court-appointed interim receiver of the Debtor (the "**Interim Receiver**"), and on hearing the submissions of counsel for Salus and counsel for the Interim Receiver and proposed Receiver and no one else appearing and on reading the consent of Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel and the taking of physical inventories;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transactions, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable and including, without limitation, the Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Ben Moss Jewellers Western Canada Ltd. and Faan Advisors Group Inc. in its capacity as Chief Restructuring Officer of JSN Jewellery Inc. and its affiliates;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (r) to make and assignment in bankruptcy for and on behalf of the Debtor and execute any and all necessary documents to effect such assignment in bankruptcy; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtor.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. **THIS COURT ORDERS** that the Salus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Salus' security or, if not so provided by the Salus' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Richter Advisory Group Inc., solely in its capacity as the receiver (the "**Receiver**") of the assets, undertakings and properties of Forever Jewellery Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the <*> day of <*>, 2016 (the "**Order**") made in an action having Court file number CV-16-<*>-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of <*> per cent above the prime commercial lending rate of Bank of <*> from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2016.

RICHTER ADVISORY GROUP INC., solely
in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

Court File No. CV-16-11439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

RECEIVERSHIP ORDER

AIRD & BERLIS LLP
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Lawyers for Salus Capital Partners, LLC

TAB 5

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. ——— CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE ——— MR.) WEEKDAY MONDAY, THE # 27TH
JUSTICE ——— NEWBOULD) DAY OF MONTH JUNE, 20 YR 2016

PLAINTIFF[†]

Plaintiff

~~—and—~~

DEFENDANT

Defendant

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

**APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. C.43, AS AMENDED**

[†]The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

ORDER
(appointing Receiver)

~~THIS MOTION~~APPLICATION made by the Plaintiff²Salus Capital Partners, LLC ("Salus") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing [~~RECEIVER'S NAME~~]Richter Advisory Group Inc. ("Richter") as receiver [~~and manager~~]- (in such capacitiescapacity, the "Receiver") without security, of all of the assets, undertakings and properties of [~~DEBTOR'S NAME~~]Forever Jewellery Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [~~NAME~~]Andrew Prunier sworn [~~DATE~~]and the Exhibits thereto June 23, 2016 and the exhibits thereto, upon reading the First Report of Richter in its capacity as Court-appointed interim receiver of the Debtor (the "Interim Receiver"), and on hearing the submissions of counsel for [~~NAMES~~], ~~no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~Salus and counsel for the Interim Receiver and proposed Receiver and no one else appearing and on reading the consent of [~~RECEIVER'S NAME~~]Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service ~~of the Notice of Motion and the Motion and filing of the notice of application and the application record~~ is hereby abridged and validated³ so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

³ If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, and the taking of physical inventories ~~and the placement of such insurance coverage as may be necessary or desirable;~~
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any ~~transaction not~~ exceeding \$ _____ transactions, provided that the aggregate

⁴~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

consideration for all such transactions does not exceed \$ 1,000,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [~~or section 31 of the Ontario *Mortgages Act*, as the case may be,~~]⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable and including, without limitation, the Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Ben Moss Jewellers Western Canada Ltd. and Faan Advisors Group Inc. in its capacity as Chief Restructuring Officer of JSN Jewellery Inc. and its affiliates;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (r) to make and assignment in bankruptcy for and on behalf of the Debtor and execute any and all necessary documents to effect such assignment in bankruptcy; and
- (s) ~~(t)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court

upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that ~~all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees.~~ The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of

its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

~~15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the

Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

18. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the

⁶ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ 100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

25. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtor.

28. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States

to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. ~~31.~~ **THIS COURT ORDERS** that the Plaintiff Salus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's Salus' security or, if not so provided by the Plaintiff's Salus' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~, Richter Advisory Group Inc., solely in its capacity as the receiver (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of Forever Jewellery Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__2016 (the "Order") made in an action having Court file number __CL__ number CV-16-__-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~[daily]~~ ~~[monthly not in advance on the ____ day of each month]~~ after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2016.

~~[RECEIVER'S NAME]~~ **RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

26520979.1

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

Court File No. CV-16-11439-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

RECEIVERSHIP ORDER

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Lawyers for Salus Capital Partners, LLC

Document comparison by Workshare Compare on June-24-16 1:47:59 PM

Input:	
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Document 2 ID	interwovenSite://AB-WS1/CM/26549514/2
Description	#26549514v2<CM> - Full Receivership Order (FJI)
Rendering set	standard

Legend:	
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Style change	0

TAB 6

Court File No. CV-16-_____-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

and

FOREVER JEWELLERY INC.

Respondent

APPLICATION UNDER SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**AFFIDAVIT OF ANDREW PRUNIER
(sworn June 23, 2016)**

I, **ANDREW PRUNIER**, of the Town of Wellesley, in the County of Norfolk, State of Massachusetts, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Director at Salus Capital Partners, LLC ("**Salus**"), the senior secured creditor of J.S.N. Jewellery Inc. (the "**JSN**"), J.S.N. Jewellery UK Limited ("**JSN UK**"), GMJ Corp. ("**GMJ**"), Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**" and, together with JSN, JSN UK, and GMJ, the "**Borrowers**"), 2373138 Ontario Inc. ("**2373**"), Forever Jewellery Inc. ("**FJI**") and Always & Forever Family Collection Incorporated ("**AFFC**"), a secured creditor of P.M.R. Inc. ("**PMR**") and a creditor of Joseph Shilon (together with 2373, FJI, AFFC and PMR the "**Guarantors**" and, the Guarantors together with the Borrowers, the "**Obligors**"). As such, I have knowledge of the matters to which I hereinafter depose, except where the information set out below is based upon the information I have received from others, in which case I have stated the source of that information and, in all such cases, believe it to be true.

NATURE OF APPLICATION AND RELIEF SOUGHT

2. This Affidavit is sworn in support of an application by Salus for:
 - (a) an ex-parte Order (the “**Interim Receivership Order**”) pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (the “**CJA**”) appointing Richter Advisory Group Inc. (“**Richter**”) as interim receiver, without security, over all of the assets, undertaking and property of FJI (in such capacity, the “**Interim Receiver**”); and
 - (b) upon service of the within application record on FJI and on a date to be set by the Court, an Order (the “**Receivership Order**”) pursuant to subsection 243(1) of the BIA and section 101 of the CJA appointing Richter as receiver, without security, over all of the assets, undertaking and property of FJI (in such capacity, the “**Receiver**”).
3. FJI is a limited guarantor of the obligations of the Borrowers to Salus and/or the other lenders party to the Borrowers’ credit agreements with Salus. Despite multiple events of default, Salus has, since April 4, 2016, allowed the Borrowers’ to overdraw on their asset-based credit facilities beyond what their borrowing base supports in order to allow them to prepare for Ben Moss’ eventual filing for protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) to restructure its business. In anticipation of that filing, on May 16, 2016, Salus entered into the Accommodation Agreement (a defined below) with the Obligors and the new, separate DIP Credit Agreement (as defined below) for Ben Moss to provide it with debtor-in-possession funding in its CCAA Proceedings (the “**CCAA Proceedings**”). FJI has guaranteed both the obligations of Ben Moss under the DIP Credit Agreement as well as the obligations of the Borrowers under the pre-existing Credit Agreement (as defined below).
4. Since the date of the Accommodation Agreement, the Borrowers and certain Guarantors have breached multiple covenants under one or more of the Accommodation Agreement, the DIP Credit Agreement or the Credit Agreement, which breaches constitute cross-defaults under all three agreements. In addition, FJI: (i) has refused to return JSN inventory in its possession in breach of the Accommodation Agreement; (ii) received unauthorized funding indirectly from Salus through PMR on the date of the Forbearance Agreement, in breach of multiple covenants

under the Credit Agreement, and has refused demands to return such funds; (iii) refused to comply with an information request made by the Court-appointed monitor in the CCAA Proceedings (the “**Monitor**”) pursuant to its powers under the Initial CCAA Order (as defined below) and (iv) refused to confirm that its guarantee continues to guarantee the Obligations of Ben Moss under recent revisions to the DIP Credit Agreement and the Accommodation Agreement which have been approved by this Court. Salus’ forbearance obligations to FJI under the Accommodation Agreement are therefore at an end, and, under such circumstances, FJI has already agreed not to contest the court-appointment of a receiver.

5. Because FJI’s inventory consists largely of gemstones, precious metals, and products of both, the inventory is extremely portable and largely untraceable. Given the nature of the collateral and given the disdain FJI has shown for its obligations under contract and under prior order of this Court, the appointment of the Interim Receiver on an ex parte basis is urgent, and the full powers of the Receiver will be required soon thereafter.

BACKGROUND TO THE OBLIGORS

6. JSN is an Ontario corporation that operates a jewellery wholesale business. JSN is 100% owned by Joseph Shilon.

7. The largest purchaser of JSN’s product in Canada is JSN’s indirect subsidiary, Ben Moss. Ben Moss is a Manitoba corporation owned by the non-operating holding company (and Guarantor), 2373. JSN acquired Ben Moss in 2013 to provide the wholesale business with an additional sales outlet as a way to maximize the wholesale business’s growth potential. At the time of the acquisition, JSN’s management recognized an opportunity to achieve performance enhancements by increased sales of the JSN’s product lines. In order to finance the acquisition, JSN utilized equity from Joseph Shilon and debt financing provided by Salus.

8. JSN also sells its products in Canada to FJI, which operates its own wholesale jewellery business but cooperates with JSN for advertising and sales purposes. Joseph Shilon’s daughter, Gila Shilon, is the owner of FJI. A copy of the Corporation Profile Report for FJI obtained from the Ontario Ministry of Government Services is attached as **Exhibit “A”** to this Affidavit. The Corporation Profile Report lists Gila Shilon, under her married name, Gila Altshuler, as the sole director and officer of FJI.

9. FJI Operates out of a facility located at 132 Jardin Drive in Vaughan, Ontario. FJI's facility is in very close proximity to JSN's head office facility located at 64 Jardin Drive, Unit #7 in Vaughan, Ontario.

10. A copy of the corporate chart for the Obligors (other than FJI) and certain of their other affiliates is attached as **Exhibit "B"** to this Affidavit.

SALUS' LOANS AND SECURITY

Credit Agreement and Security

11. Salus and the Obligors (other than AFFC and PMR) are parties to a credit agreement dated July 18, 2013 (the "**Original Credit Agreement**"), a copy of which (minus its exhibits and schedules) is attached as **Exhibit "C"** to this Affidavit. Ben Moss became a Borrower under the Original Credit Agreement by a Joinder to Credit Agreement dated July 18, 2013. The Original Credit Agreement was amended by a First Amending Agreement made as of September 25, 2014 (the "**First Amendment**" and, together with the Original Credit Agreement, the "**Credit Agreement**"), a copy of which is attached as **Exhibit "D"** to this Affidavit.

12. Pursuant to the Credit Agreement, Salus has supplied the Borrowers with:

- (a) a revolving operating facility in the maximum amount of CDN\$50,000,000 or its US\$ equivalent, subject to sufficient collateral borrowing base (the "**Revolving Credit Facility**");
- (b) a CDN\$7,000,000 term loan facility (the "**Term A Facility**");
- (c) a CDN\$13,000,000 term loan facility (the "**Term B Facility**"); and
- (d) a US\$3,500,000 term loan facility provided for in the First Amendment (the "**Term C Facility**"),

(collectively, the "**Credit Facilities**") which Credit Facilities were to be used: (a) to finance the acquisition of Ben Moss and to fund certain expenses incurred in connection with such acquisition; (b) to refinance the Borrowers' former credit and/or leasing facilities; (c) to purchase working capital assets in the ordinary course, including inventory and equipment; (d) for capital

expenditures; (e) for general corporate purposes of the Borrowers; and (f), in the case of the Term C Facility, to pay down the Revolving Credit Facility.

13. By a Guarantee Agreement dated as of July 18, 2013 (the "**FJI Guarantee**"), FJI guaranteed all present and future obligations under the Credit Agreement, limited to an amount not exceeding the sum of all amounts due and payable by FJI to JSN (the "**FJI Guaranteed Obligations**"), a copy of which FJI Guarantee is attached as **Exhibit "E"** to this Affidavit.

14. As security for their obligations to Salus, JSN, FJI and the other Canadian Obligors provided, among other things, a Canadian General Security Agreement dated July 18, 2013 (the "**GSA**"), registration in respect of which was made pursuant to the *Personal Property Security Act* (Ontario) on June 25, 2013 by financing statement no.: 20130625 1552 1862 8422, a copy of which GSA is attached as **Exhibit "F"** to this Affidavit.

15. As discussed in more detail below, Salus and the Obligors entered in to an Accommodation Agreement (the "**Accommodation Agreement**") and a Super Priority DIP Credit Agreement both dated May 16, 2016 (the "**DIP Credit Agreement**"). A copy of the Accommodation Agreement is attached as **Exhibit "G"** to this Affidavit and a copy of the DIP Credit Agreement is attached as **Exhibit "H"** to this Affidavit.

16. At section 10.22 of the DIP Credit Agreement FJI confirmed that the FJI Guarantee (as secured by the GSA) guaranteed the obligations of Ben Moss DIP Credit Agreement and that it continued to guarantee the obligations of the Borrowers under the Credit Agreement.

OTHER CREDITORS

17. A search conducted by Salus' counsel of registrations made pursuant to the PPSA revealed no registrants other than Salus. A copy of the PPSA search results are attached as **Exhibit "I"** to this Affidavit.

FINANCIAL DIFFICULTIES AND INITIAL DEFAULTS

18. As previously discussed, JSN acquired Ben Moss to provide its wholesale business with an additional sales outlet as a way to maximize the wholesale business's growth potential. Since the acquisition, however, there has been a significant decrease in Ben Moss's net sales and

profitability, largely as a result of softness in western Canada due to declining energy prices and the appreciation of the U.S. dollar relative to the Canadian dollar, which has caused difficulties with inventory levels, merchandising and product mix at the Ben Moss stores. Furthermore, certain poorly performing stores, the expense of certain economically unviable leases, and the costly operation of a head office in Winnipeg have consumed much needed capital. As a result of the foregoing, Ben Moss has impaired cash flow and has been experiencing a severe liquidity crisis.

19. As a result of Ben Moss' financial troubles, JSN (as lead Borrower under the Credit Agreement) began, at the end of March, 2016, to request, and Salus provided, a series of overadvances under the Revolving Credit Facility of the Credit Agreement (collectively, the "Permitted Overadvances"). Each Permitted Overadvance constituted and Event of Default under the Credit Agreement.

20. In late April, 2016, Ben Moss advised Salus of its intention to seek an order pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA") granting it protection from its creditors, and seeking the appointment of Alvarez & Marsal Canada Inc. ("A&M") as monitor. Ben Moss advised that the purpose of such filing was to allow it to pursue and aggressive restructuring of its business by, among other things:

- (a) closing certain unprofitable or marginally profitable retail locations;
- (b) renegotiating the terms of certain economically unviable leases;
- (c) liquidating inventory at locations being closed; and
- (d) seeking an investor to refinance the Credit Facilities.

21. In addition to Ben Moss' continuing troubles, JSN itself started to see a slump in receipts. One major issue that came into focus during this period was JSN's funding of its Thai affiliates, Utopia Jewellery Co. and Utopia Diamond Inc. (collectively, "Utopia"), and its Israeli affiliate, Global Diamonds (G.D.) Ltd. ("Global Diamonds"), none of whom were within Salus' collateral fence. It is understood that JSN funded approximately US\$600,000 per week to Utopia and Global Diamonds for the purchase of raw materials and to fund operations of the Utopia

manufacturing facility, and also provided Utopia some precious metals directly. Although Mr. Shilon originally made representations to Salus that he was the 100% indirect owner of Utopia and that Utopia had approximately \$5.6 million of surplus inventory gem stones that would be transferred from Utopia to JSN, an on-site visit at Utopia's facilities in Thailand by representatives of A&M, Salus and Gordon Brothers revealed that there was no surplus gemstone inventory of any such value and that Mr. Shilon did not appear to be in control of the Utopia assets and operations.

22. On May 12, 2016, JSN, Ben Moss and certain other Obligors, including PMR, appointed FAAN Advisors Group Inc. to serve as their chief restructuring officer (the "CRO"), and delegated the authority to direct their operations and management, stripping the same powers away from Joseph Shilon.

23. In light of the following defaults:

- (a) the Borrowers' inability to repay the Permitted Overadvances;
- (b) breach of the Borrowers' collateral coverage ratio covenant under the Credit Agreement, and
- (c) Ben Moss' expressed intention to commence the CCAA Proceedings,

Salus, by its counsel on May 16, 2016, sent the Obligors (other than AFFC and PMR) demands for repayment of the Borrowers' obligations under the Credit Agreement. In the case of the corporate Obligors, their demands were accompanied by notices of intention to enforce security under Section 244 of the BIA dated the same date. Copies of the demand (the "Demand") and the BIA Notice (the "BIA Notice") sent to the FJI are attached as **Exhibit "J"** to this Affidavit.

24. Also on May 16, 2016, but subsequent to the issuance of the Demand and BIA Notice, the Obligors, Salus, as administrative and collateral agent and lender, and Salus CLO 2012-1, Ltd. ("Salus CLO"), as lender, executed the Accommodation Agreement pursuant to which Salus agreed to forbear from enforcing the GSA and to continue to fund the Borrowers other than Ben Moss under the Credit Agreement, in accordance with the borrowing base, and to provide

overadvance funding to Ben Moss pursuant to the DIP Credit Agreement made the same day between the same parties (though with only Ben Moss as borrower).

25. On May 18, 2016 (the "**Filing Date**"), Ben Moss was granted protection under the CCAA pursuant to an initial order of this Court that, among other things:

- (a) granted a stay of proceedings in favour of Ben Moss;
- (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under the DIP Credit Agreement from Salus CLO, subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing; and
- (c) appointed A&M as the monitor in respect of Ben Moss (the "**Monitor**").

26. Ben Moss obtained an amended and restated Initial Order (the "**Amended and Restated Initial Order**") at the comeback hearing held on May 26, 2016, which, among other things, authorized Ben Moss to borrow up to the full CAD\$8 million under the DIP Credit Agreement. A copy of the Amended and Restated Initial Order is attached as **Exhibit "K"** to this Affidavit.

SUBSEQUENT DEFAULTS

27. As condition of Salus' continued forbearance, the Accommodation Agreement required FJI to return to JSN all the JSN inventory in its possession by no later than May 17, 2016. FJI continues to retain approximately \$500,000 (at FJI's cost) of JSN's inventory which it refuses to return. The CRO has advised that that fact was confirmed by FJI's general manager, Itria Buso.

28. Another condition of the Accommodation Agreement was that any purchases by FJI from JSN be made on a cash on delivery basis. Shortly after its appointment, the CRO and the Monitor learned that FJI had received \$174,418.89 from PMR on May 16, 2016 for no consideration and without any authorization of the CRO. The Monitor determined that the payment was improper and Counsel to PMR, on instruction of the CRO, made demand on FJI on May 26, 2016 for repayment of that amount. FJI has refused to repay the amount unless it is allowed credit terms for purchases from JSN, contrary to the terms of the Accommodation Agreement. A copy of the demand letter from PMR's counsel to is attached as **Exhibit "L"** to this Affidavit.

29. In connection with the above-described improper payment, counsel to the Monitor wrote to, among others, Joseph Shilon and Gila Shilon (the owner of FJI) on May 27, 2016 to request certain information to which the Monitor was entitled pursuant to the terms of the both the Amended and Restated Initial Order and the Accommodation Agreement. No information was ever forthcoming from Gila Shilon or FJI with regard to FJI or the improper payments. This failure to respect the Monitor's request was a breach of both the Amended and Restated Initial Order and the cooperation conditions in section 4.2 of the Accommodation Agreement. A copy of the letter from the Monitor's counsel to FJI is attached as **Exhibit "M"** to this Affidavit.

30. The above actions of JSN constitute Forbearance Termination Events under the Accommodation Agreement.

31. Salus' commitments under the Accommodation Agreement are also conditional on, among other things, the Borrowers complying with and generally operating their businesses in a manner consistent with the Cash Flows (as defined in the Accommodation Agreement) and, in no event permitting any negative variance from the Cash Flows of sales, cash receipts, expenditures, loan balances, borrowing base calculations, inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and on a negative variance of availability by more than 10%, tested weekly.

32. The Borrowers' variance report for the two-week period ended May 27, 2016, as well as for the weeks ending June 3, 2016 and June 10, 2016 all showed negative variances far in excess of 10% in multiple line items. These results constituted further breaches of the Borrowers' covenants under the Accommodation Agreement and the DIP Credit Agreement, and, as such, constitute Forbearance Termination Events under the Accommodation Agreement.

33. In response to the variance report for the two-week period ended May 27, 2016, Salus' counsel issued a reservation of rights letter to JSN, a copy of which is attached as **Exhibit "N"** to this Affidavit.

34. Other events of default under the Accommodation Agreement, the Credit Agreement and/or the DIP Credit Agreement which constitute further Forbearance Termination Events include:

- (a) the Borrowers' failure to repay the Permitted Overadvance (as defined in the Accommodation Agreement) in accordance with the Cash Flows;
- (b) removal and/or destruction by Joseph Shilon of molds integral to JSN's business, without any authority or authorization from the CRO to do so; and
- (c) Joseph Shilon instructing the employees of JSN not to attend work on Monday, June 20, 2016 without any authority or authorization from the CRO to do so.

35. The waterfall of how proceeds was to be applied under the DIP Credit Agreement and the Accommodation Agreement required the Permitted Overadvance under the Credit Agreement to be paid down first. Because of unexpectedly weak collections, the Permitted Overadvance was not paid down on the timeline contemplated by the Cash Flows, and became larger than the remaining availability under the DIP Credit Agreement leaving Ben Moss with the prospect of no credit. Salus agreed to amend the waterfall of proceeds in an Amendment to Accommodation Agreement and an Amendment to Superpriority DIP Credit Agreement, both dated June 14, 2016, such that Ben Moss proceeds would be applied first to reduce the DIP facility. FJI and Joseph Shilon both refused to sign these amendments, which refusals constitute breaches of the further assurances provisions at section 8.4 of the Accommodation Agreement and section 6.17 of the DIP Credit Agreement, and thus an additional Event of Default and Forbearance Termination Event.

GUARANTEED OBLIGATIONS

36. As at June 20, 2016, the Obligors were indebted to Salus for the following amounts pursuant to the Credit Facilities, the DIP Agreement and/or their guarantees, plus interest, legal and bank fees and costs (in the case of certain Guarantors, subject to applicable limitations under their guarantees):

CDN Revolving Loan

Principal

CAD \$20,682,744.62

Interest

CAD \$116,174.24

the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum.

USD Revolving Loan

Principal	US \$21,453,628.90
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Interest	US \$123,987.73
----------	-----------------

the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

Term Loan A

Principal	CAD \$4,750,000.00
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Interest	CAD \$35,493.06
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Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

Term Loan B

Principal	CAD \$4,871,987.17
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Interest	CAD \$41,817.89
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Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

Term Loan C

Principal	US \$3,500,000.00
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Interest	US \$32,569.44
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Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

DIP USD Revolving Loan

Principal	US \$5,054,115.92
-----------	-------------------

Interest	US \$43,459.02
----------	----------------

Interest accrues at the rate of 20.00% per annum.

37. As described above, the FJI Guarantee is limited to the amount owed by FJI to JSN. As at June 18, 2016, FJI was indebted to JSN in the amount of \$1.9 million (such amount, as the same may fluctuate, the "Guaranteed Obligations").

APPOINTMENT OF THE INTERIM RECEIVER AND RECEIVER

38. For the above reasons, Salus believes that there is an urgent need to preserve and protect the assets of the Obligors by the immediate ex parte appointment of an interim receiver and the subsequent appointment of a full receiver.

39. Pursuant to subsection 8.1(j) of the GSA, Salus has the right, upon an event of default, to seek the court-appointment of a receiver over any or all of the Obligors party thereto.

40. Pursuant to section 8 of the FJI Guarantee, FJI's liability thereunder is not diminished by any extension or increase to the Borrowers' obligations under the Credit Agreement or the DIP Credit Agreement, nor by any failure by Salus to pursue remedies against other Obligors.

41. Pursuant to subsection 4.1(c) of the Accommodation Agreement, Salus is required to give only one day's notice prior to taking enforcement action upon the termination of the Accommodation Agreement. By notice dated and served on June 21, 2016, Salus notified that FJI and Joseph Shilon that Forbearance Termination Events had occurred and that Salus intended to take Lender Enforcement Actions (as defined in the Accommodation Agreement) against those two Obligors. The notice to FJI was sent by Salus' counsel electronically to the CRO, in accordance with the notice provisions of the Accommodation Agreement, and by courier to FJI's premises. When the courier could not deliver the notice, it was then sent by facsimile to the number listed on FJI's website. A copy of such notice is attached as **Exhibit "O"** to this Affidavit.

42. In section 7.1 of the Accommodation Agreement, FJI agreed not to opposed the court-appointment of a receiver upon the occurrence of a Forbearance Termination Event.

43. Salus has, at all times, acted in good faith and with considerable patience towards the Borrowers, including by continuing to provide overadvances in the face of mounting Events of Default. At this time, however, Salus considers it just and equitable that a receiver be appointed over FJI.

44. Richter is a licensed trustee and has consented to act as Receiver should the Court so appoint it.

45. In light of the foregoing, the Interim Receiver must be appointed immediately on an ex parte basis and its power expanded to that of the Receiver upon notice to FJI at a date to be set by the Court upon appointment of the Interim Receiver.

46. This Affidavit is made in support of the within application for the appointment of Richter as receiver of FJI, and for no other or improper purpose whatsoever.

SWORN before me at the City of Boston, in the State of Massachusetts, this 23rd day of June, 2016.

Christine Petersen
Notary Public

)
)
)
)
)
Andrew Prunier

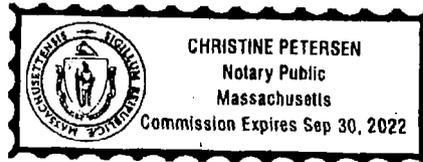


EXHIBIT "A"

Attached is Exhibit "A" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Request ID: 018708202
 Transaction ID: 60465044
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2016/03/07
 Time Report Produced: 13:07:13
 Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
1587896	FOREVER JEWELLERY INC.	2003/09/17
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
		Amalgamation Ind.
132 JARDIN DRIVE		NOT APPLICABLE
Suite # 123952756		NOT APPLICABLE
CONCORD		New Amal. Number
ONTARIO		Notice Date
CANADA L4K 1X9		NOT APPLICABLE
		Letter Date
Mailing Address		NOT APPLICABLE
132 JARDIN DRIVE		Revival Date
Suite # 123952756		Continuation Date
CONCORD		NOT APPLICABLE
ONTARIO		NOT APPLICABLE
CANADA L4K 1X9		Transferred Out Date
		Cancel/Inactive Date
		NOT APPLICABLE
		NOT APPLICABLE
		EP Licence Eff.Date
		EP Licence Term.Date
		NOT APPLICABLE
		NOT APPLICABLE
		Date Commenced in Ontario
		Date Ceased in Ontario
		NOT APPLICABLE
		NOT APPLICABLE
Activity Classification	Number of Directors Minimum Maximum	
NOT AVAILABLE	00001 00010	

Request ID: 018708202
Transaction ID: 60465044
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/03/07
Time Report Produced: 13:07:13
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1587896	FOREVER JEWELLERY INC.

Corporate Name History	Effective Date
FOREVER JEWELLERY INC.	2003/09/17

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
GILA ALTSHULER	446 FAIRLAWN AVENUE TORONTO ONTARIO CANADA M5M 1V1

Date Began	First Director	Resident Canadian
2011/05/31	NOT APPLICABLE	
Designation	Officer Type	
DIRECTOR		Y

Request ID: 018708202
Transaction ID: 60465044
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/03/07
Time Report Produced: 13:07:13
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
1587896	FOREVER JEWELLERY INC.

Administrator: Name (Individual / Corporation)	Address
GILA ALTSHULER	446 FAIRLAWN AVENUE TORONTO ONTARIO CANADA M5M 1V1

Date Began	First Director	Resident Canadian
2011/05/31	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
GILA ALTSHULER	446 FAIRLAWN AVENUE TORONTO ONTARIO CANADA M5M 1V1

Date Began	First Director	Resident Canadian
2011/05/31	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	SECRETARY	Y

Request ID: 018708202
Transaction ID: 60465044
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/03/07
Time Report Produced: 13:07:13
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

1587896

Corporation Name

FOREVER JEWELLERY INC.

Administrator:
Name (Individual / Corporation)

GILA
ALTSHULER

Address

446 FAIRLAWN AVENUE

TORONTO
ONTARIO
CANADA M5M 1V1

Date Began

2011/05/31

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Request ID: 018708202
Transaction ID: 60465044
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2016/03/07
Time Report Produced: 13:07:13
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1587896

FOREVER JEWELLERY INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2014

1C

2015/07/18 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

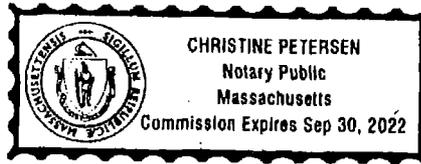
The issuance of this report in electronic form is authorized by the Ministry of Government Services.

EXHIBIT "B"

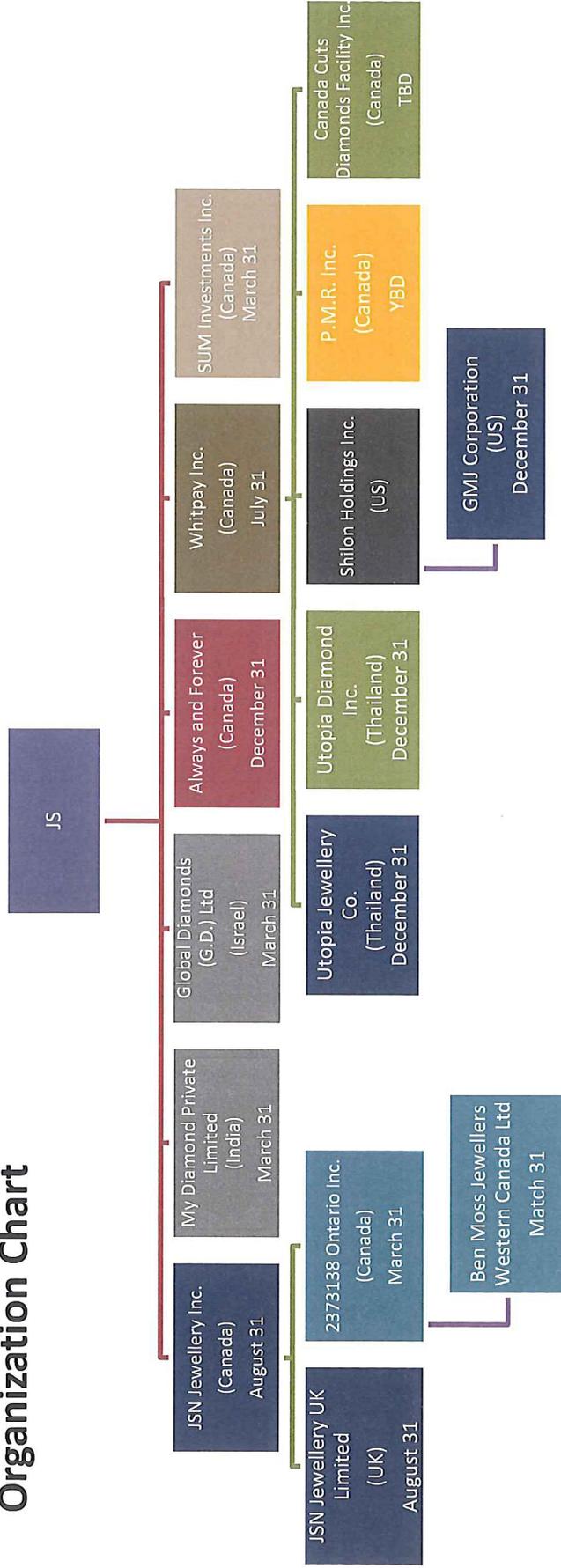
Attached is Exhibit "B" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Organization Chart



JSN companies included in the Combined FS. JSN Jewellery Inc., GMJ and JSN UK sell to retail customers only within their respective markets. All product is JSN manufactured product which is produced by Utopia Jewellery in Thailand. None of the JSN entities have retail operations.

Ben Moss Jewellers Western Canada Ltd. is also included in the Combined FS. It is the operating company of the Canadian retail business acquired in July 2013. It was acquired indirectly through the personal holding companies of the vendor shareholders via a new holding company – all of which were amalgamated immediately following closing. The numbered company is a holding company and inactive.

Wholesale family ring collection in Canada

- Management services company for the family members who work in the group
- Diamond cutting operations
- Diamond brokers
- Precious metals and stone reclamation
- Real estate holding company (no JSN companies lease from this entity)
- Holding company – has never been active

EXHIBIT “C”

Attached is Exhibit "C" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



Execution Version

CREDIT AGREEMENT

Dated as of July 18, 2013

among

J.S.N. JEWELLERY INC.

as the Lead Borrower

For

The Borrowers Named Herein

The Guarantors Named Herein

SALUS CAPITAL PARTNERS, LLC

as Administrative Agent and Collateral Agent

and

The Other Lenders Party Hereto

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EXHIBITS

Form of

A	Committed Loan Notice
B	Reserved
C-1	Revolving Note
C-2	Term Note
D	Compliance Certificate
E	Assignment and Assumption
F	Borrowing Base Certificate
G	Credit Card Notification
H	DDA Notification

CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of July 18, 2013, among J.S.N. JEWELLERY INC., a company existing under the laws of the Province of Ontario (the "Lead Borrower"), the Persons named on Schedule 1.01 hereto (collectively, with the Lead Borrower, the "Borrowers"), the Persons named on Schedule 1.02 hereto (collectively the "Guarantors"), each lender from time to time party hereto, and

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

The Borrowers have requested that the Lenders provide a revolving credit facility and two term loan credit facilities, and the Lenders have indicated their willingness to lend on the terms and conditions set forth herein.

All Obligations (as hereinafter defined) of Borrower(s) to Lenders hereunder and under the other Loan Documents shall be full recourse to each of the Borrowers and secured by Agent's security interest in and liens on all or substantially all of the assets of Borrowers included in the Collateral.

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

ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"Accommodation Payment" as defined in Section 10.21(d).

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

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

"ACH" means automated clearing house transfers.

"Acquisition" means, with respect to any Person (a) an investment in, or a purchase of, a Controlling interest in the Equity Interests of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, (c) any amalgamation, merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Equity Interests, of any Person, or (d) any acquisition of any Store locations of any Person, in each case in any transaction or group of transactions which are part of a common plan.

"Acquisition Agreement" means that certain "Definitive Agreement in respect of Ben Moss Jewellers Western Canada Ltd." dated as of July 17, 2013 by and among the Lead Borrower and Seller.

"Acquisition Documents" means collectively, the Acquisition Agreement, the Steps Memo and all other agreements and documents required to be entered into or delivered pursuant thereto or in connection with the Target Acquisition, each in the form delivered to the Agent on the Closing Date and as amended as permitted hereunder.

"Additional Commitment Lender" shall have the meaning provided in Section 2.15(a)(iii).

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

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

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

"Agent's Office" means the Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Agent may from time to time notify the Lead Borrower and the Lenders.

"Agent Parties" shall have the meaning specified in Section 10.02(c).

"Aggregate Revolving Commitments" means the Revolving Commitments of all the Revolving Lenders. As of the Closing Date, the Aggregate Revolving Commitments are C\$50,000,000.

"Aggregate Term Loan A Commitments" means the Term Loan A Commitments of all of the Term Loan A Lenders. As of the Closing Date, the Aggregate Term Loan A Commitments are \$7,000,000.

"Aggregate Term Loan B Commitments" means the Term Loan B Commitments of all of the Term Loan B Lenders. As of the Closing Date, the Aggregate Term Loan B Commitments are \$13,000,000.

"Agreement" means this Credit Agreement.

"Allocable Amount" has the meaning specified in Section 10.21(d).

"AML Program" has the meaning specified in Section 5.30.

"Applicable Commitment Fee Percentage" has the meaning specified in the Pricing Letter.

"Applicable Lenders" means the Required Lenders, the Required Revolving Lenders, the Required Term Lenders, all affected Lenders, or all Lenders, as the context may require.

"Applicable Margin" has the meaning specified in the Pricing Letter.

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

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

"Approved Extended Payment Terms" means extended payment terms which are listed in the "Extended Credit Policy" of the Borrower, as disclosed by the Lead Borrower to the Agent prior to the Closing Date, and which have been approved in writing from time to time by the Agent;

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

"Approved Precious Metals/Stones Inventory" means inventory consisting of gold, platinum, silver and any other precious metal or precious cut stone approved by the Agent and held for manufacturing by a Credit Party.

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

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

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Agent, in substantially the form of Exhibit E or any other form approved by the Agent.

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

such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a capital lease.

"Audited Financial Statements" means the audited Combined balance sheet of the Financial Statement Parties for the Fiscal Year ended August 31, 2012, and the related combined statements of income or operations, Shareholders' Equity and cash flows for such Fiscal Year of the Financial Statement Parties, including the notes thereto.

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

- (a) the Maximum Revolving Loan Amount
- minus
- (b) the Total Revolver Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Lead Borrower shall certify to the Agent that all accounts payable (including, without limitation, all rents) and Taxes are being paid on a timely basis.

"Availability Block" means \$2,000,000.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Revolving Lender to make Committed Revolving Loans.

"Availability Reserves" means, without duplication of any other Reserves or items to the extent such items are otherwise addressed or excluded through eligibility criteria, such reserves as the Agent from time to time determines in its Permitted Discretion as being appropriate (a) to reflect the impediments to the Agent's ability to realize upon the Collateral, (b) to reflect claims and liabilities that the Agent determines will need to be satisfied in connection with the realization upon the Collateral, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base - Revolving Credit, or the assets, business, financial performance or financial condition of any Loan Party, or (d) to reflect that a Default or an Event of Default then exists. Without limiting the generality of the foregoing, Availability Reserves may include, in the Agent's Permitted Discretion, (but are not limited to) Rent Reserves and reserves based on: (i) customs duties, and other costs to release Inventory which is being imported into Canada; (ii) outstanding Taxes and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, goods and services, harmonized sales, municipal, Quebec corporate, and other Taxes which may have priority over the interests of the Agent in the Collateral; (iii) salaries, wages and benefits due to employees of any Borrower and any employee service deductions, workers' compensation, pension fund or *Wage Earner Protection Act* (Canada) obligations of any Borrower; (iv) Customer Credit Liabilities; (v) Customer Deposits; (vi) reserves for reasonably anticipated changes in the Appraised Value of Eligible Inventory between appraisals; (vii) warehousemen's or bailee's charges and other Permitted Encumbrances which may have priority over the interests of the Agent in the Collateral; (viii) amounts due to vendors on account of consigned goods; (ix) Cash Management Reserves; (x) royalties payable in respect of licensed merchandise; (xi) claims of any pension regulator or any pension claimant in respect of pension entitlements which, upon a realization upon the Collateral, may represent a Claim on the Collateral or its proceeds which ranks prior to the Liens arising under the Loan Documents; (xii) dilution exceeding 5% of the face amount of Eligible Trade Receivables; (xiii) the amount of any Term Loan A Margin Shortfall or Term Loan B Margin Shortfall, to the extent that such amount is not paid

pursuant to Section 2.05 hereof; (xiv) Inventory that is subject to the rights of suppliers under section 81.1 of the *Bankruptcy and Insolvency Act (Canada)* or the rights of farmers under section 81.2 of the *Bankruptcy and Insolvency Act (Canada)*; and (xv) potential currency rate exchange fluctuations which may from time to time occur in respect of any Eligible Trade Receivables payable in a currency other than Canadian Dollars.

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

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

"Benefit Plan" means any plan, fund, program, or policy, whether oral or written, formal or informal, funded or unfunded, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability or life insurance, under which any Loan Party has any liability with respect to any employee or former employee, but excluding any Pension Plan.

"Blocked Account" has the meaning provided in Section 6.13(a)(ii).

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

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

"Borrower Materials" means any Borrowing Base – Revolving Credit, Borrowing Base – Term Loan A or Borrowing Base - Term Loan B information, reports, financial statements and other materials delivered by the Borrowers hereunder, as well as other Reports and information provided by the Agent to the Lenders.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrowing" means a Revolving Credit Borrowing, the Term Loan A Borrowing or the Term Loan B Borrowing, as the context may require.

"Borrowing Base – Revolving Credit" means, at any time of calculation, an amount equal to (without duplication):

(a) 90% of the face amount of Eligible Trade Receivables;

plus

(b) with respect to finished goods jewellery inventory which is Eligible Inventory, 95% of the Appraised Value of such Eligible Inventory;

plus

(c) with respect to Approved Precious Metals/Stones Inventory, which is Eligible Inventory, 90% of the Cost of such Eligible Inventory;

minus

(d) the amount of all Availability Reserves at such time; and

minus

(e) the Availability Block.

For the purpose of valuing any of the foregoing denominated in U.S. Dollars, the amount in U.S. Dollars shall be converted into the Equivalent Amount thereof in Canadian Dollars; provided that Agent reserves the right to adjust such conversion rate to take into account currency rate exchange fluctuations since the last valuation thereof.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit F hereto (with such changes therein as may be required by the Agent to reflect the components of and reserves against the Borrowing Base – Revolving Credit as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Lead Borrower which shall include appropriate exhibits, schedules, supporting documentation, and additional reports as reasonably requested by the Agent.

"Borrowing Base – Term Loan A" means, on any day, an amount equal to 75% of Combined EBITDA for the most recently completed Measurement Period.

"Borrowing Base – Term Loan B" means, on any day, an amount equal to 200% of Combined EBITDA for the most recently completed Measurement Period.

"Business" means the business carried on by the Lead Borrower on the Closing Date, being the business of manufacturing, distributing and retail sale of jewellery and related products.

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

"Business Plan" means, in respect of the initial Business Plan approved by the Agent, the Business Plan annexed hereto as Exhibit H; and in respect of any other Fiscal Year, (i) a detailed forecast prepared by management of the Borrowers for such Fiscal Year, which shall include (without limitation) an Availability model, Combined income statement, balance sheet, and supplemental cash flow statements of the Financial Statement Parties, by month, each prepared in conformity with GAAP and consistent with the Borrowers' then current practices, the amount of any proposed distributions to be made pursuant to Section 7.06 and such other information (financial or otherwise) as is reasonably requested by the Agent, and (ii) any revisions to such forecast, in each case in form and substance satisfactory to the Agent in its Permitted Discretion. For the avoidance of doubt, a draft or preliminary plan submitted by the Borrowers to the Agent shall be deemed the "Business Plan" hereunder until it has been finalized and accepted by the Borrowers and the Agent. A true and complete copy of the Initial Business Plan delivered hereunder is annexed hereto as Exhibit H.

"Canadian Dollars", "Dollars", "C\$" or "\$" shall mean the lawful currency of Canada.

"Canadian Prime Rate means, for any day, a rate per annum equal to the annual rate of interest announced by Royal Bank of Canada (or its successor) from time to time as its prime rate for Canadian dollar commercial loans in Canada. Any change in any interest rate provided for in the
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Agreement based upon the Canadian Prime Rate shall take effect at the time of such change in the Canadian Prime Rate.

"Canadian Prime Rate Loan" means a Loan that bears interest based on the Canadian Prime Rate.

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

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as liabilities on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateral Account" means a non-interest bearing account established by one or more of the Loan Parties in the name of the Agent (or as the Agent shall otherwise direct) and under the sole and exclusive dominion and control of the Agent, in which deposits are required to be made in accordance with Section 2.03(g) or 8.02(c).

"Cash Collateralize" has the meaning specified in Section 2.03(g). Derivatives of such term have corresponding meanings.

"Cash Management Bank" means bank or other financial institution as approved by Agent in its sole discretion.

"Cash Management Reserves" means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Loan Parties with respect to Cash Management Services then provided or outstanding.

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

"CCQ" means the *Civil Code of Québec*.

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

or other Governmental Authority, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means an event or series of events by which:

(a) the Family Group shall cease to own and control legally and beneficially (free and clear of all Liens), either directly or indirectly, equity securities in the Lead Borrower representing more than seventy-five percent (75%) of the combined voting power of all of Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Lead Borrower on a fully-diluted basis (and taking into account all such securities that the Family Group has the right to acquire pursuant to any option right (as defined in clause (b) below));

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Lead Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Lead Borrower, or control over the Equity Interests of the Lead Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or Persons have the right to acquire pursuant to any option right) representing twenty-five percent (25%) or more of the combined voting power of such securities; or

(d) any "change in control" or "sale" or "disposition" or similar event as defined in any Organizational Document of any Loan Party or in any Material Contract, or any document governing Material Indebtedness of any Loan Party, shall occur;

(e) the Lead Borrower fails at any time to own, directly or indirectly, one-hundred percent (100%) of the Equity Interests of each other Loan Party free and clear of all Liens (other than the Liens in favour of the Agent), except where such failure is as a result of a transaction permitted by the Loan Documents; or

(f) a Responsible Officer as of the Closing Date shall for any reason either cease to hold such office or be actively engaged in the day-to-day management of the Borrower, unless (i) a successor with similar industry experience, reputation and expertise is appointed within six (6) months of such cessation and such successor is appointed following good faith consultation with the Agent or (ii) if such successor does not have (or Agent shall

reasonably determine such successor does not have) similar industry experience, reputation or expertise, such successor is appointed with the consent of the Agent (such consent not to be unreasonably withheld, conditioned or delayed) within six (6) months of such cessation.

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

"Collateral" means any and all "Collateral" as defined in any applicable Security Document and all other property that is or is intended under the terms of the Security Documents to be subject to Liens in favour of the Agent.

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

"Collateral Assignment of Acquisition Documents" means the Collateral Assignment of Acquisition Documents dated as of the Closing Date between the Lead Borrower and the Agent, in form and substance reasonably satisfactory to the Agent, as may be amended, modified or supplemented from time to time.

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

"Combined EBITDA" means, at any date of determination, an amount equal to Combined Net Income of the Financial Statement Parties on a Combined basis for the most recently completed Measurement Period, plus (a) the following to the extent deducted in calculating such Combined Net Income: (i) Combined Interest Charges, (ii) the provision for Federal, provincial, territorial, state, local and foreign Income Taxes, (iii) depreciation and amortization expense, (iv) Consultant Costs, and (v) other non-recurring expenses reducing such Combined Net Income which do not represent a cash item in such period or any future period (in each case of or by the Financial Statement Parties for such Measurement Period), minus (b) the following to the extent included in calculating such Combined Net Income: (i) Federal, provincial, territorial, state, local and foreign income tax credits and (ii) all non-cash items increasing Combined Net Income (in each case of or by the Financial Statement Parties for such Measurement Period), all as determined on a Combined basis in accordance with GAAP. Any Consultant Costs, and specific cash items as may be approved in writing by Lender, shall be excluded for the purposes of determining Combined EBITDA.

"Combined Fixed Charge Coverage Ratio" means, at any date of determination, the ratio of (a) (i) Combined EBITDA for such period plus (ii) Combined Rental Expense, minus (iii) Capital Expenditures made during such period minus (iv) the aggregate amount of federal, provincial, territorial, state, local and foreign income taxes paid in cash during such period to (b) the sum of (i) Debt Service Charges plus (ii) Combined Rental Expense, plus (iii) the aggregate amount of all Restricted Payments, in each case, of or by the Lead Borrower and its Subsidiaries for the most recently completed Measurement Period, all as determined on a Combined basis in accordance with GAAP.

"Combined Interest Charges" means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under Swap Contracts, but excluding any non-cash or deferred interest financing costs, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense with respect to such period under Capital Lease Obligations that is treated as interest in accordance with GAAP, in each case of or by the Financial Statement Parties for the most recently completed Measurement Period, all as determined on a Combined basis in accordance with GAAP.

"Combined Leverage Ratio" means, at any date of determination, the ratio of (a) all indebtedness outstanding under this Agreement to (b) Combined EBITDA for such period, all as determined on a Combined basis in accordance with GAAP.

"Combined Net Income" means, as of any date of determination, the net income of the Financial Statement Parties for the most recently completed Measurement Period, all as determined on a Combined basis in accordance with GAAP; provided, however, that there shall be excluded therefrom (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the income (or loss) of such Person during such Measurement Period in which any other Person has a joint interest, except to the extent of the amount of cash dividends or other distributions actually paid in cash to such Person during such period, (c) the income (or loss) of such Person during such Measurement Period and accrued prior to the date it becomes a Subsidiary of a Person or any of such Person's Subsidiaries or is merged into or consolidated with a Person or any of its Subsidiaries or that Person's assets are acquired by such Person or any of its Subsidiaries, and (d) the income of any direct or indirect Subsidiary of a Person to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, except that the Lead Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Combined Net Income.

"Combined Rental Expense" means, with respect to any Person for any fiscal period, the aggregate fixed and contingent rental obligations of such Person determined in accordance with GAAP which are payable in respect of such period under leases of real property (net of income from subleases thereof, but including taxes, insurance, maintenance and similar expenses which the lessee is obligated to pay under the terms of such leases and excluding amortization of deferred lease inducements and straight line rent), whether or not such obligations are reflected as liabilities or commitments on a balance sheet of such Person or in the notes thereto.

"Commitment" means, as to each Lender, such Lender's Revolving Commitment, Term Loan A Commitment and Term Loan B Commitment, as applicable.

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

"Committed Revolving Loan" has the meaning specified in Section 2.01(c).

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Concentration Account" has the meaning provided in Section 6.13(c).

"Consent" means actual consent given by a Lender from whom such consent is sought; or the passage of seven (7) Business Days from receipt of written notice to a Lender from the Agent of a proposed course of action to be followed by the Agent without such Lender giving the Agent written notice of that Lender's objection to such course of action.

"Consultant Costs" means the costs and expenses associated with the appointment of the consultant referenced in Section 6.10(a), together with any other third party costs associated with business evaluations conducted on behalf of the Borrowers to determine the Borrowing Base from time to time.

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

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

"Cost" means the lower of cost or market value of inventory, based upon the Borrowers' accounting practices, known to the Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers' purchase journals or the Borrowers' stock ledger. "Cost" does not include inventory capitalization costs or other non purchase price charges (such as freight) used in the Borrowers' calculation of cost of goods sold.

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

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Notifications" has the meaning provided in Section 6.13(a)(i).

"Credit Card Receivables" means each "account" (as defined in the PPSA) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Loan Party resulting from charges by a customer of a Loan Party on credit or debit cards issued by such issuer in connection with the sale of goods by a Loan Party, or services performed by a Loan Party, in each case in the ordinary course of its business.

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

"Credit Party Expenses" means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Agent and its Affiliates, in connection with this Agreement and the other Loan

Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) counsel for the Agent, (B) outside consultants for the Agent, (C) appraisers, (D) commercial finance examinations, and (E) all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication or financing of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of the rights of the Credit Parties in connection with this Agreement or the Loan Documents or efforts to monitor, preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring or negotiations in respect of any obligations; (b) all customary fees and charges (as adjusted from time to time) of the Agent with respect to access to online Loan information, the disbursement of funds (or the receipt of funds) to or for the account of Loan Parties (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith; and (c) upon the occurrence and during the continuance of an Event of Default or upon any increase in the amount of Aggregate Revolving Commitments after the Closing Date, all reasonable out-of-pocket expenses incurred by the Credit Parties who are not the Agent or an Affiliate of the Agent, provided that such Credit Parties shall be entitled to reimbursement for no more than one counsel in each relevant jurisdiction representing all such Credit Parties (absent a conflict of interest in which case the Credit Parties may engage and be reimbursed for additional counsel).

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

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

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

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

"DDA Notification" has the meaning provided therefor in Section 6.13(a)(iii).

"Debt Service Charges" means for any Measurement Period, the sum of (a) Combined Interest Charges paid or required to be paid for such Measurement Period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations and any Synthetic Lease Obligations but including, without limitation, Capital Lease Obligations) for such Measurement Period, in each case determined on a Combined basis in accordance with GAAP.

"Debtor Relief Laws" means the *Companies Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium,

rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of Canada (or any provincial or territorial subdivision thereof) or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"Default Rate" means (a) when used with respect to Obligations other than the Term Loans, an interest rate equal to (i) the U.S. Base Rate or the Canadian Prime Rate as the case may be plus (ii) the Applicable Margin, if any, applicable to U.S. Base Rate Loans or Canadian Prime Rate Loans as the case may be plus (iii) three percent (3%) per annum; and (b) when used with respect to the Term Loans, an interest rate equal to the applicable Term Loan Interest Rate plus three percent (3%) per annum.

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

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

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

"Eligible Inventory" means, as of the date of determination thereof, without duplication, items of jewellery Inventory of a Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course of the Borrowers' business and deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base – Revolving Credit, and Approved Precious Metals/Stones Inventory, in each case that, except as otherwise agreed by the Agent, (A) complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and (B) is not excluded as ineligible by virtue of one or more of the criteria set forth below. Except as otherwise agreed by the Agent, in its Permitted Discretion, the following items of Inventory shall not be included in Eligible Inventory:

- (a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;
- (b) Inventory that is leased by or is on consignment to a Borrower or which is consigned by a Borrower to a Person which is not a Loan Party;
- (c) Inventory that is not located at a location that is owned or leased by a Borrower, except (i) inventory in transit between such owned or leased locations or locations which meet the criteria set forth in clause (ii) below, or (ii) to the extent that the Borrowers

have furnished the Agent with (A) any PPSA or UCC financing statements or other documents that the Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Agent;

(d) Inventory that is located in a distribution centre leased by a Borrower unless the applicable lessor and any financier or Person holding a Lien in respect of such location (if applicable) has delivered to the Agent a Collateral Access Agreement, or the Agent has implemented Reserves for such location;

(e) Inventory that is comprised of goods which are (i) damaged, defective, "seconds," or otherwise unmerchantable, (ii) to be returned to the vendor, (iii) work in process (other than Approved Precious Metals/Stones Inventory), raw materials (other than Approved Precious Metals/Stones Inventory), or that constitute samples, spare parts, promotional, marketing, labels, bags and other packaging and shipping materials or supplies used or consumed in a Borrower's business, (iv) seasonal in nature and which have been packed away for sale in the subsequent season, (v) not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, (vi) bill and hold goods, or (vii) otherwise not salable above cost;

(f) Inventory that is not subject to a perfected first priority security interest in favour of the Agent;

(g) Inventory that is not insured in compliance with the provisions of Section 5.10 hereof;

(h) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which any Borrower or any of its Subsidiaries has received notice of a dispute in respect of any such agreement.

"Eligible Trade Receivables" means Accounts deemed by the Agent in its Permitted Discretion to be eligible for inclusion in the calculation of the Borrowing Base – Revolving Credit arising from the sale of the Borrowers' Inventory (other than those consisting of Credit Card Receivables) that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Account (i) has been earned by performance and represents the bona fide amounts due to a Borrower from an account debtor, and in each case originated in the ordinary course of business of such Borrower, and (ii) in each case is acceptable to the Agent in its Permitted Discretion, and is not ineligible for inclusion in the calculation of the Borrowing Base – Revolving Credit pursuant to any of clauses (a) through (t) below. Without limiting the foregoing, to qualify as an Eligible Trade Receivable, an Account shall indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the Borrowers to reduce the amount of such Eligible Trade Receivable. Except as otherwise agreed by the Agent, any Account included within any of the following categories shall not constitute an Eligible Trade Receivable:

- (a) Accounts that are not evidenced by an invoice;
- (b) Accounts which have extended payment terms which are not Approved Extended Payment Terms;
- (c) Accounts (other than Accounts having Approved Extended Payment Terms) due from any account debtor that has more than 50% of the total amounts of its Accounts outstanding 120 days past the invoice date;
- (d) All Accounts owed by an account debtor and/or its Affiliates which together exceeding seventy-five percent (75%) of the amount of all Accounts at any one time (but the portion of the Accounts not in excess of the applicable percentages may be deemed Eligible Trade Receivables, in the Agent's Permitted Discretion);
- (e) Accounts (I) that are not subject to a perfected first priority security interest in favour of the Agent, or (II) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Agent pursuant to the Security Documents);
- (f) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;
- (g) Accounts which arise out of any sale made not in the ordinary course of business, made on a basis other than upon credit terms usual to the business of the Borrowers/Loan Parties or are not payable in Canadian Dollars, U.S. Dollars or Pounds Sterling;
- (h) Accounts which are owed by any account debtor whose principal place of business is not within Canada, the continental United States or the United Kingdom;
- (i) Accounts which are owed by any Affiliate or any employee of a Loan Party (other than accounts owed by Forever Jewellery Inc. that otherwise meet the requirements of "Eligible Trade Receivables");
- (j) Accounts for which all consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the account debtor or in connection with the enforcement of such Account by the Agent have been duly obtained, effected or given and are in full force and effect;
- (k) Accounts due from an account debtor which is the subject of any proceeding under Debtor Relief Laws, has had a trustee, custodian, receiver and manager trustee, conservator, liquidator, sequestrator or receiver appointed for all or a substantial part of its property, has made an assignment or petition for the benefit of creditors or has suspended its business;
- (l) Accounts due from any Governmental Authority except to the extent that the subject account debtor is the federal government of Canada or the United States and has complied with the *Financial Administration Act* (Canada) (if owing by the Government of Canada) or the Federal Assignment of Claims Act of 1940 (if owing by the government of the United States of America) and any applicable provincial, territorial, state, local or foreign legislation restricting the assignment thereof;

(m) Accounts (i) owing from any Person that is also a supplier to or creditor of a Loan Party or any of its Subsidiaries or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling a Loan Party or any of its Subsidiaries to discounts on future purchase therefrom;

(n) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, set off or charge back;

(o) Accounts evidenced by a promissory note or other instrument unless the promissory note or other instrument has been pledged to, and is in the possession of, the Agent;

(p) Accounts in respect of royalties, services, pre-bill or progress payments, licensing fees or lease payments;

(q) Accounts consisting of amounts due from vendors as rebates or allowances;

(r) Accounts which are in excess of the credit limit for such account debtor established by the Loan Parties in the ordinary course of business and consistent with past practices;

(s) Accounts which constitute Credit Card Receivables; or

(t) Accounts which the Agent determines in its Permitted Discretion to be unacceptable for borrowing.

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

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense, or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" has the meaning set forth in the PPSA.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests

therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

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

"Exceeding Amount" has the meaning specified in Section 2.05(e).

"Excluded Taxes" means, with respect to the Agent, any Lender or any other recipient (in this definition, a "recipient") of any payment to be made by or on account of any obligation of the Loan Parties hereunder, income or franchise Taxes imposed on (or measured by) such recipient's taxable income or capital Taxes imposed on (or measured by) such recipient's taxable capital, in each case by Canada, or by the jurisdiction under the applicable Laws of which such recipient is organized or in which its principal office is located.

"Executive Order" has the meaning set forth in Section 10.18.

"Existing Credit Agreements" means (a) the credit agreement dated August 26, 2011 between Lead Borrower and Royal Bank of Canada, (b) the group of accounts agreement dated as of December 8, 2008 among J.S.N. Jewellery UK Limited, as borrower, and National Westminster Bank PLC, as lender, and (c) the fixed and floating charge created July 8, 2002 among J.S.N. Jewellery UK Limited, as borrower and Royal Bank of Scotland Commercial Services Limited, as lender.

"Existing Target Credit Agreement" means the credit agreement September 17, 2009 between Target and Royal Bank of Canada.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including (i) payments received by the Loan Parties pursuant to the Acquisition Documents after the Closing Date, including any deferred payment, any purchase price adjustments that result in a payment by the Seller to the Lead Borrower, and any indemnity payments made by the Sellers), and (ii) tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), expropriation and condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments related to any Acquisition.

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

"Family Group" means (i) Mr. Joseph Shilon and his spouse, parents, siblings, children, grandchildren, nephews, nieces, heirs, legatees, lineal descendants, executors, administrators, and other representatives, and (ii) any trust, family partnership or similar investment entity of which any of the foregoing Persons are trustee(s), managing member(s), managing partner(s) or similar officer(s) and/or that is for the benefit of any of the foregoing Persons as long as one or more of such Persons has the exclusive or joint right to control the voting and disposition of securities held by such trust, family partnership or similar investment entity.

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

"Financial Statement Parties" means the Borrowers and each of their Subsidiaries. For greater certainty, (i) prior to the completion of the Target Acquisition, the Financial Statement Parties will be J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp and Utopia Jewellery Co. Ltd., and (ii) after the completion of the Target Acquisition, the Financial Statement Parties will be the Persons listed in paragraph (i) above plus the Target and its Subsidiaries.

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

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

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

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

"Governmental Authority" means any nation or government, or of any political subdivision thereof, whether provincial, territorial, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such indebtedness or other obligation of the payment or performance of such indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any indebtedness or other

obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantor" has the meaning specified in the introductory paragraph hereto and any Subsidiary of the Parent that shall be required to execute and deliver a Facility Guarantee pursuant to Section 6.12.

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

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guarantees, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

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

"Indemnified Taxes" means Taxes other than Excluded Taxes.

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

"Information" has the meaning specified in Section 10.07.

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

"Interest Payment Date" means the first day after the end of each month and the Maturity Date.

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

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

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

- (a) obsolescence;
- (b) seasonality;
- (c) Shrink;
- (d) imbalance;
- (e) change in Inventory character;

- (f) change in Inventory composition;
- (g) change in Inventory mix;
- (h) markdowns (both permanent and point of sale);
- (i) retail markons and markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events;
- (j) out-of-date and/or expired Inventory; and
- (k) reductions in precious metal commodity costs.

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

"Investment Policy" means the complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the Closing Date (both before and after the Acquisition contemplated by the Acquisition Agreement), showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof, as set forth on Schedule 7.02(a).

"ITA" means the *Income Tax Act* (Canada).

"Joinder" means an agreement, in form and substance satisfactory to the Agent pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Guarantor, as the Agent may determine.

"Junior Debt" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent or which is secured by Liens which have been postponed to the Liens granted to secure the Obligations on terms approved by the Agent.

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

"Lead Borrower" has the meaning assigned to such term in the preamble of this Agreement.

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

"Lender" means, individually, a Revolving Lender or a Term Lender, and collectively, all such persons.

"Lender Questionnaire" means a questionnaire executed and delivered, or to be executed and delivered as the context may require, by each Lender in form and substance satisfactory to the Agent.

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

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

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

"Loan" means any extension of credit by a Lender to the Borrowers under Article II in the form of a Committed Revolving Loan, a Term Loan or otherwise.

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

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

"Loan Parties" means, collectively, the Borrowers and each Guarantor (but, for greater certainty, excluding the Personal Guarantor). For greater certainty, upon the completion of the Target Acquisition, "Loan Parties" includes the Target and any of its Subsidiaries.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Loan Party or the Borrowers and their Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material impairment of the rights and remedies of the Agent or any Lender under any Loan Document or a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect.

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

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

"Maturity Date" means the third anniversary of the Closing Date.

"Maximum Rate" has the meaning provided therefor in Section 10.09.

"Maximum Revolving Loan Amount" means, at any time of determination, the lesser of (a) the Aggregate Revolving Commitments, and (b) the Borrowing Base – Revolving Credit.

"Maximum Term Loan A Amount" means, at any time of determination, the lesser of (a) the Aggregate Term Loan A Commitments, and (b) the Borrowing Base – Term Loan A.

"Maximum Term Loan B Amount" means, at any time of determination, the lesser of (a) the Aggregate Term Loan B Commitments, and (b) the Borrowing Base – Term Loan B.

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

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Proceeds" means:

(a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Agent's Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under the Loan Documents), and (B) the reasonable and customary out-of-pocket expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses and commissions) paid by any Loan Party to third parties (other than Affiliates)); and

(b) with respect to the sale or issuance of any Equity Interest by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Loan Party or such Subsidiary in connection therewith.

"Note" means (a) a Revolving Note or (b) a Term Note, as each may be amended, restated, supplemented or modified from time to time.

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

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

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

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

"Outstanding Amount" means with respect to Committed Revolving Loans and Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans and Term Loans occurring on such date.

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

"Parent" means Personal Guarantor.

"Participant" has the meaning specified in Section 10.06(d).

"Participation Register" has the meaning provided therefor in Section 10.06(d).

"Patriot Act" shall have the meaning provided in Section 10.17.

"Payment Conditions" means, at the time of determination with respect to any specified transaction or payment, that (a) no Default or Event of Default then exists or would arise as a result of entering into such transaction or the making of such payment, (b) either (i) after giving effect to

such transaction or payment, the Pro Forma Availability Condition has been satisfied and the Combined Fixed Charge Coverage Ratio, as projected on a pro-forma basis for the twelve months following such transaction or payment, will be equal to or greater than 1.1:1.0, or (ii) the Loan Parties shall have provided the Agent with a solvency opinion (including an analysis of future Availability demonstrating that the Pro Forma Availability Condition will be satisfied) from an unaffiliated third party valuation firm reasonably satisfactory to the Agent. Prior to undertaking any transaction or payment which is subject to the Payment Conditions, the Loan Parties shall deliver to the Agent either (i) evidence of satisfaction of the conditions contained in clause (b) (i) above on a basis (including, without limitation, giving due consideration to results for prior periods) reasonably satisfactory to the Agent or (ii) the solvency opinion referred to in clause (b)(ii).

"PCMLTFA" has the meaning given in Section 5.30.

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

"Perfection Certificate" means that certain perfection certificate dated as of the date hereof, executed and delivered by the Loan Parties in favour of the Agent, for the benefit of the Credit Parties, and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Agent) executed and delivered by the applicable Borrower or Guarantor in favour of the Agent for the benefit of the Credit Parties contemporaneously with the execution and delivery of Joinder executed in accordance with Section 6.12, in each case, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance herewith.

"Permitted Acquisition" means the Target Acquisition.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable business judgment from the perspective of a secured, asset-based commercial lender.

"Permitted Disposition" means any of the following:

- (a) Dispositions of inventory in the ordinary course of business;
- (b) non-exclusive licenses of Intellectual Property of a Loan Party or any of its Subsidiaries in the ordinary course of business;
- (c) licenses for the conduct of licensed departments within the Loan Parties' Stores in the ordinary course of business; provided that, if requested by the Agent, the Agent shall have entered into an intercreditor agreement with the Person operating such licensed department on terms and conditions reasonably satisfactory to the Agent;
- (d) Dispositions of Equipment in the ordinary course of business that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer useful or necessary in its business or that of any Subsidiary and is replaced with similar property having at least equivalent value;
- (e) sales, transfers and Dispositions among the Loan Parties or by any Subsidiary to a Loan Party;
- (f) sales, transfers and Dispositions by any Subsidiary which is not a Loan Party to another Subsidiary that is not a Loan Party.

"Permitted Encumbrances" means:

(g) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 6.04;

(h) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by applicable Law, arising in the ordinary course of business and securing obligations that are not overdue or are being contested in compliance with Section 6.04;

(i) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, employment insurance and other social security laws or regulations;

(j) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(k) Liens in respect of judgments that would not constitute an Event of Default hereunder;

(l) easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party and such other minor title defects or survey matters that are disclosed by current surveys that, in each case, do not materially interfere with the current use of the real property;

(m) Liens existing on the Closing Date and listed on Schedule 7.01 and any Permitted Refinancings thereof;

(n) Liens on fixed or capital assets acquired by any Loan Party which are permitted under clause (c) of the definition of Permitted Indebtedness so long as (i) such Liens and the Indebtedness secured thereby are incurred prior to or within ninety (90) days after such acquisition, (ii) the Indebtedness secured thereby does not exceed the cost of acquisition of such fixed or capital assets and (iii) such Liens shall not extend to any other property or assets of the Loan Parties;

(o) Liens in favour of the Agent;

(p) statutory Liens of landlords and lessors in respect of rent not in default;

(q) possessory Liens in favour of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(r) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favour of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository Institutions or securities intermediaries;

(s) Liens arising from precautionary PPSA filings regarding "true" operating leases or, to the extent permitted under the Loan Documents, the consignment of goods to a Loan Party; and

(t) Liens in favour of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations that are (A) being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation.

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

(a) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03 and any Permitted Refinancing thereof;

(b) Indebtedness of any Loan Party to any other Loan Party;

(c) purchase money Indebtedness of any Loan Party to finance the acquisition of any personal property consisting solely of fixed or capital assets, including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof; provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (c) shall not exceed C\$250,000 at any time outstanding (excluding those amounts in respect of the three capital leases set forth in Schedule 5.05 and those capital leases referenced in the Business Plan delivered to Agent hereunder that are approved by Agent in writing); provided further that, if requested by the Agent, the Loan Parties shall cause the holders of such Indebtedness to enter into a Collateral Access Agreement on terms reasonably satisfactory to the Agent;

(d) contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of Stores;

(e) the Obligations; and

(f) Indebtedness of the Loan Parties not otherwise specifically described herein in an aggregate principal amount not to exceed C\$150,000 at any time outstanding.

"Permitted Investments" means each of the following as long as no Default or Event of Default exists or would arise from the making of such Investment:

(a) readily marketable obligations issued or directly and fully guaranteed or Insured by the federal government of Canada or the United States or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the federal government of Canada or the United States (as applicable) is pledged in support thereof;

(b) commercial paper issued by any Person organized under the laws of Canada or any province or territory thereof or any state of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent

grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of Canada, the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of Canada, the United States, any state thereof or the District of Columbia, and is a Schedule I bank under the *Bank Act* (Canada) or a member of the Federal Reserve System of the United States, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least C\$1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(d) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than one hundred percent (100%) of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(e) Investments, classified in accordance with GAAP as current assets of the Loan Parties, in any money market fund or mutual fund that has the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(f) Investments existing on the Closing Date, and set forth on Schedule 7.02, but not any increase in the amount thereof or any other modification of the terms thereof;

(g) (i) Investments by any Loan Party and its Subsidiaries in their respective Subsidiaries outstanding on the Closing Date, and (ii) additional Investments by any Loan Party and its Subsidiaries in Loan Parties;

(h) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(i) Guarantees constituting Permitted Indebtedness;

(j) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(k) advances to officers, directors and employees of the Loan Parties and Subsidiaries in the ordinary course of business in an amount not to exceed C\$50,000 to any individual at any time or in an aggregate amount not to exceed C\$200,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(l) capital contributions made by any Loan Party to another Loan Party; and

(m) other Investments not otherwise specifically described herein and not exceeding C\$100,000 in the aggregate at any time outstanding.

provided, however, that notwithstanding the foregoing, no such Investments specified in clauses (a) through (e) and clause (m) shall be permitted unless (i) no Loans are then outstanding, and (ii) such Investments shall be pledged and hypothecated to the Agent as additional collateral for the Obligations pursuant to such agreements as may be reasonably required by the Agent.

"Permitted Overadvance" means an Overadvance made by the Agent, in its Permitted Discretion, which is made:

- (a) to maintain, protect or preserve the Collateral and/or the Credit Parties' rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties;
- (b) to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;
- (c) to pay any other amount chargeable to any Loan Party hereunder; or
- (d) at the request of Lead Borrower, an amount of up to 5% of the then applicable Borrowing Base – Revolving Credit, such amount to be repaid by the Borrowers within 45 days of the applicable Borrowing (provided that no such request may be made more than twice during the term of this Agreement),

provided however, that the foregoing shall not result in any claim or liability against the Agent (regardless of the amount of any Overadvance) for Unintentional Overadvances and such Unintentional Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; provided further that in no event shall the Agent make an Overadvance, if after giving effect thereto, the principal amount of the Borrowings would exceed the Aggregate Revolving Commitments (as in effect prior to any termination of the Revolving Commitments pursuant to Section 2.06 hereof).

"Permitted Refinancing" means, with respect to any Person, any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to "Refinance"), the Indebtedness being Refinanced (or previous refinancings thereof constituting a Permitted Refinancing); provided, that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus unpaid accrued interest and premiums thereon and underwriting discounts, defeasance costs, fees, commissions and expenses), (b) the weighted average life to maturity of such Permitted Refinancing is greater than or equal to the weighted average life to maturity of the Indebtedness being Refinanced, (c) such Permitted Refinancing shall not require any scheduled principal payments due prior to the Maturity Date, (d) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations under this Agreement, such Permitted Refinancing shall be subordinated in right of payment to such Obligations on terms at least as favourable to the Credit Parties as those contained in the documentation governing the Indebtedness being Refinanced, (e) no Permitted Refinancing shall have direct or indirect obligors who were not also obligors of the Indebtedness being Refinanced, or greater guarantees or security, than the Indebtedness being Refinanced, (f) such Permitted Refinancing shall be otherwise on terms not materially less favourable to the Credit Parties than those contained in the documentation governing the Indebtedness being Refinanced, including, without limitation, with respect to financial and other covenants and events of default, (g) the interest rate applicable to any such Permitted Refinancing shall not exceed the then applicable market

interest rate, and (h) at the time thereof, no Default or Event of Default shall have occurred and be continuing.

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

"Personal Guarantor" means Mr. Joseph Shilon of 33 Thornbank Road, Thornhill, Ontario L4J 2A1.

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

"Prepayment Event" means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of a Loan Party, other than any Disposition of Inventory in the ordinary course of business;

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of (and payments in lieu thereof), any property or asset of a Loan Party, unless (i) the proceeds therefrom are required to be paid to the holder of a Lien on such property or asset having priority over the Lien of the Agent or (ii) the proceeds therefrom are utilized for purposes of replacing or repairing the assets in respect of which such proceeds, awards or payments were received within 180 days of the occurrence of the damage to or loss of the assets being repaired or replaced;

(c) the issuance by a Loan Party of any Equity Interests, other than any such issuance of Equity Interests (i) to a Loan Party, (ii) as consideration for a Permitted Acquisition or (iii) as a compensatory issuance to any employee, director, or consultant (including under any option plan);

(d) the incurrence by a Loan Party of any Indebtedness for borrowed money other than Permitted Indebtedness; or

(e) the receipt by any Loan Party of any Extraordinary Receipts.

"Prepayment Fee" has the meaning given in the Pricing Letter.

"Pricing Letter" means the letter agreement, dated as of the date hereof, among the Lead Borrower, the Agent and the Arranger.

"Pro Forma Availability Condition" shall mean, for any date of calculation with respect to any transaction or payment, the Pro Forma Excess Availability following, and after giving effect to, such transaction or payment, will be equal to or greater than \$2,000,000.

"Pro Forma Excess Availability" shall mean, for any date of calculation, after giving pro forma effect to the transaction then to be consummated the projected Availability as of the end of each Fiscal Month during any subsequent projected twelve (12) Fiscal Months.

"Quebec Security Documents" means the following documents dated as of the Closing Date among the applicable Loan Parties and the Agent: (i) a Deed of Hypothec and Issue of Bonds, (ii) a Bond, (iii) a Delivery Order, and (iv) a Pledge of Bond, in each case as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

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

"Receipts and Collections" has the meaning specified in Section 6.13(c).

"Register" has the meaning specified in Section 10.06(c).

"Regulation" has the meaning specified in Section 5.30.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

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

"Reports" has the meaning provided in Section 9.12(b).

"Request for Borrowing" means, with respect to a Borrowing or conversion of Committed Revolving Loans or a Term Loan, a Committed Loan Notice.

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

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

"Required Term Loan A Lenders" means, as of any date of determination, Lenders holding more than fifty percent (50%) of the then outstanding principal balance of the Term Loan A.

"Required Term Loan B Lenders" means, as of any date of determination, Lenders holding more than fifty percent (50%) of the then outstanding principal balance of the Term Loan B.

"Reserves" means all Inventory Reserves and Availability Reserves.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer of a Loan Party or any of the other individuals designated in writing

to the Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder and for whom the Agent has received satisfactory background checks. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" shall mean, with respect to any Person, any payment by such Person (i) of any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of such Person or any of its Subsidiaries, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance, cancellation, termination or other acquisition of any of any such capital stock or Equity Interest of such Person or any warrants, options or rights to acquire any such capital stock or Equity Interests of such Person, or the making by such Person of any other distribution in respect of any such stock or Equity Interests, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a shareholder of such Person or to an Affiliate of a shareholder of such Person, (v) in respect of an Investment, or (vi) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof, other than those made in the ordinary course of business at a time when no Default has occurred and is continuing hereunder and which are disclosed in a Business Plan delivered to the Agent in accordance with Section 6.01(d) and which are expressly approved by the Agent in writing.

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

"Revolving Commitment Increase" shall have the meaning provided in Section 2.15(a)(i).

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

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

"Revolving Loan Increase Effective Date" shall have the meaning provided therefor in Section 2.15(a)(iv).

"Revolving Note" means a promissory note made by the Borrowers in favour of a Revolving Lender evidencing the Committed Revolving Loans made by such Revolving Lender, substantially in the form of Exhibit C-1.

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

"Salus" means Salus Capital Partners, LLC and its successors.

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

"Security Agreement" means the Security Agreement dated as of the Closing Date among the Loan Parties and the Agent, as the same now exists or may hereafter be amended, modified, supplemented, renewed, restated or replaced.

"Security Documents" means the Security Agreement, the Collateral Assignment of Acquisition Documents, the Blocked Account Agreements, the DDA Notifications, the Credit Card Notifications, Quebec Security Documents and each other security agreement or other Instrument or document executed and delivered to the Agent pursuant to this Agreement or any other Loan Document granting a Lien to secure any of the Obligations.

"Settlement Date" has the meaning provided in Section 2.14(a).

"Shilon Guarantee" means a guarantee by the Personal Guarantor of the Obligations, with recourse under such guarantee limited to \$3,000,000.

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

"Solvent" and "Solvency" means, with respect to any Person on a particular date, that such Person is not an "insolvent person" within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

"Spot Rate" has the meaning given to such term in Section 1.07 hereof.

"Steps Memo" has the meaning given to such term in the Acquisition Agreement.

"Store" means any retail store (which may include any real property, fixtures, equipment, inventory and other property related thereto) operated, or to be operated, by any Loan Party.

"Subordinated Indebtedness" means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agent.

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

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master

agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

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

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

"Target" means Ben Moss Jewellers Western Canada Ltd.

"Target Acquisition" means the direct or indirect acquisition by the Lead Borrower (or a newly-created wholly-owned Subsidiary of the Lead Borrower) on the Closing Date of all of the issued and outstanding equity securities of the Target and all shareholder loans owed by the Target or any of its Subsidiaries.

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

"Term Borrowing" means, collectively, the Term Loan A Borrowings and the Term Loan B Borrowings.

"Term Commitments" means, collectively, the Term Loan A Commitments and the Term Loan B Commitments.

"Term Lenders" means, collectively, the Term Loan A Lenders and the Term Loan B Lenders.

"Term Loan A" means any term loan made by the Term Loan A Lenders pursuant to Section 2.01(a).

"Term Loan A Applicable Margin" has the meaning given in the Pricing Letter.

"Term Loan A Borrowing" means the borrowing of the Term Loan A made by each of the Term Lenders on the Closing Date pursuant to Section 2.01(a).

"Term Loan A Commitment" means, as to each Term Loan A Lender, its obligation to make a portion of the Term Loan A pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Term Loan A Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Term Loan A Lender becomes a party hereto, as applicable. As of the Closing Date, the aggregate amount of Term Loan A Commitments is C\$7,000,000.

"Term Loan A Interest Rate" means a per annum rate equal to (a) with respect to Loans made in Canadian Dollars, the Canadian Prime Rate plus the Term Loan A Applicable Margin or (b) with respect to Loans made in U.S. Dollars, the U.S. Base Rate plus the Term Loan A Applicable Margin.

"Term Loan A Lender" means each Lender having a Loan A Term Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Assumption by which such Person becomes a Term Loan A Lender, or after the making of the Term Loan A, each Lender holding any portion of the Term Loan A.

"Term Loan A Margin Shortfall" means, at any time, the amount by which the aggregate principal amount of Term Loan A exceeds the aggregate amount of the Borrowing Base – Term Loan A as then in effect.

"Term Loan A Note" means a promissory note made by the Borrowers in favour of a Term Loan A Lender evidencing the Term Loan A made by such Term Loan A Lender, substantially in the form of Exhibit C-2.

"Term Loan B" means any term loan made by the Term Loan B Lenders pursuant to Section 2.01(b).

"Term Loan B Applicable Margin" has the meaning given in the Pricing Letter.

"Term Loan B Borrowing" means the borrowing of the Term Loan B made by each of the Term Lenders on the Closing Date pursuant to Section 2.01(b).

"Term Loan B Commitment" means, as to each Term Loan B Lender, its obligation to make a portion of the Term Loan B pursuant to Section 2.01(b) in an aggregate principal amount not to exceed the amount set forth opposite such Term Loan B Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Term Loan B Lender becomes a party hereto, as applicable. As of the Closing Date, the aggregate amount of Term Loan B Commitments is C\$13,000,000.

"Term Loan B Interest Rate" means a per annum rate equal to (a) with respect to Loans made in Canadian Dollars, the Canadian Prime Rate plus the Term Loan B Applicable Margin or (b) with respect to Loans made in U.S. Dollars, the U.S. Base Rate plus the Term Loan B Applicable Margin.

"Term Loan B Lender" means each Lender having a Loan B Term Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Assumption by which such Person becomes a Term Loan B Lender, or after the making of the Term Loan B, each Lender holding any portion of the Term Loan B.

"Term Loan B Margin Shortfall" means, at any time, the amount by which the aggregate principal amount of Term Loan A and Term Loan B exceeds the aggregate amount of the Borrowing Base – Term Loan B as then in effect.

"Term Loan B Note" means a promissory note made by the Borrowers in favour of a Term Loan B Lender evidencing the Term Loan B made by such Term Loan B Lender, substantially in the form of Exhibit C-2.

"Term Loan Interest Rate" means either of the Term Loan A Interest Rate or the Term Loan B Interest Rate, as the context may require.

"Term Loans" means, collectively, the Term Loan A Loans and the Term Loan B Loans.

"Term Note" means, collectively, the Term Loan A Notes and the Term Loan B Notes.

"Termination Date" means the earliest to occur of (i) the Maturity Date, (ii) the date on which the maturity of the Obligations is accelerated (or deemed accelerated) and the Revolving Commitments are irrevocably terminated (or deemed terminated) in accordance with Article VIII, or (iii) the termination of the Revolving Commitments in accordance with the provisions of Section 2.06(a) hereof.

"Total Outstandings" means the outstanding principal balance of the Term Loans plus the Total Revolver Outstandings.

"Total Revolver Outstandings" means the aggregate Outstanding Amount of all Committed Revolving Loans.

"Trading with the Enemy Act" has the meaning set forth in Section 10.18.

"Transactions" means the acquisition of the Target by Lead Borrower as more particularly described in the Acquisition Documents.

"Type" means, with respect to a Committed Revolving Loan, its character as a Canadian Prime Rate Loan or a U.S. Base Rate Loan.

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

"United States" and "U.S." mean the United States of America.

"U.S. Base Rate" means, for any day, a rate per annum equal to the annual rate of interest announced by Royal Bank of Canada (or its successor) from time to time as its base rate for U.S. Dollar commercial loans in Canada. Any change in any interest rate provided for in the Agreement based upon the U.S. Base Rate shall take effect at the time of such change in the U.S. Base Rate.

"U.S. Base Rate Loan" means a Loan that bears interest based on the U.S. Base Rate.

"U.S. Dollars" and "US\$" mean lawful money of the United States.

"Yield Revenue" means (i) all amounts which are (or would be) payable on account of interest on the principal portion of a Term Loan to be prepaid through twelve months after the Closing Date (assuming that the applicable portion of a Term Loan had not been prepaid and that interest accrued at the rate in effect on the date of prepayment), less (ii) any interest on the applicable portion of the Term Loans amount paid in cash from and after the Closing Date through the date of prepayment.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless

the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in the relevant currency in full in cash or immediately available funds (or, in the case of contingent reimbursement obligations with respect to Bank Products and any other contingent Obligations, providing Cash Collateralization or other collateral as may be requested by the Agent) of all of the Obligations other than (i) unasserted contingent indemnification Obligations, and (ii) any Obligations relating to Bank Products (other than Swap Contracts) that, at such time, are allowed by the applicable Bank Product provider to remain outstanding without being required to be repaid or Cash Collateralized or otherwise collateralized as may be requested by the Agent.

1.03 Accounting Terms Generally.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Lead Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Lead Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Lead Borrower shall provide to the Agent and the Lenders financial statements and other

documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 English Language. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c'est leur volonté que cette convention et les autres documents de crédit y afférents soient rédigés en anglais seulement et que tous les documents, y compris tous avis, envisagés par cette convention soient rédigés en anglais seulement.

1.07 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II, Article IX and Article X) or any of the other Loan Documents to be in Canadian Dollars or U.S. Dollars (as applicable) shall also include the equivalent of such amount in any currency other than that in which it is expressed, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with U.S. Dollars (as applicable). For purposes of this Section 1.07, the "Spot Rate" for a currency means, at any time, the rate determined by the Agent to be the rate quoted to the Agent as the spot rate for the purchase by the Agent of such currency with another currency through its principal foreign exchange trading office at such time.

1.08 Currency Matters. Principal, interest, reimbursement obligations, fees, and all other amounts payable under this Agreement and the other Loan Documents to the Credit Parties shall be payable in the currency in which such Obligations are denominated. Unless stated otherwise, all calculations, comparisons, measurements or determinations under this Agreement shall be made in Canadian Dollars. For the purpose of such calculations, comparisons, measurements or determinations, amounts denominated in other currencies shall be converted in the Equivalent Amount of Canadian Dollars on the date of calculation, comparison, measurement or determination.

1.09 Judgment Currency.

(a) If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 1.09 referred to as the "Judgment Currency") an amount due under any Loan Document in any currency (the "Obligation Currency") other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 1.09 being hereinafter in this Section 1.09 referred to as the "Judgment Conversion Date").

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 1.09(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Section 1.09(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.

(c) The term "rate of exchange" in this Section 1.09 means the rate of exchange at which Agent, on the relevant date at or about 12:00 noon on the relevant date, would be prepared to sell, in accordance with Agent's normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

(d) Unless otherwise specified, all references to dollar amounts in this Agreement shall mean Canadian Dollars.

1.10 Québec Matters. For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property", (b) "real property" or "real estate" shall include "immovable property", (c) "tangible property" shall include "corporeal property", (d) "intangible property" shall include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolatory clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the PPSA or UCC shall include publication under the CCQ, (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (i) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatary", (k) "construction liens" shall include "legal hypothecs"; (l) "joint and several" shall include "solidary"; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall include "ownership on behalf of another as mandatary"; (o) "easement" shall include "servitude"; (p) "priority" shall include "prior claim"; (q) "survey" shall include "certificate of location and plan"; (r) "state" shall include "province"; (s) "fee simple title" shall include "absolute ownership"; and (t) "accounts" shall include "claims".

ARTICLE II THE COMMITMENTS AND BORROWINGS

2.01 Term Loans; Committed Revolving Loans; Reserves.

(a) Subject to the terms and conditions set forth herein, each Term Loan A Lender severally agrees to make a loan to the Borrowers on the Closing Date in a principal amount not to exceed the Term Loan A Commitment of such Term Loan A Lender. Amounts repaid in respect of the Term Loan A may not be reborrowed. Any portion of the Term Loan A Commitments which is not borrowed on the Closing Date shall be cancelled.

(b) Subject to the terms and conditions set forth herein, each Term Loan B Lender severally agrees to make a loan to the Borrowers on the Closing Date in a principal amount not to exceed the Term Loan B Commitment of such Term Loan B Lender. Amounts

repaid in respect of the Term Loan B may not be reborrowed. Any portion of the Term Loan B Commitments which is not borrowed on the Closing Date shall be cancelled.

(c) Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a "Committed Revolving Loan") to the Borrowers from time to time, on any Business Day during the Availability Period on which the Agent's offices are open to conduct business, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Revolving Commitment, or (y) such Lender's Applicable Percentage of the Borrowing Base – Revolving Credit; subject in each case to the following limitations:

(i) after giving effect to any Revolving Credit Borrowing, the Total Revolver Outstandings shall not exceed the Maximum Revolving Loan Amount; and

(ii) after giving effect to any Revolving Credit Borrowing, the aggregate Outstanding Amount of the Committed Revolving Loans of any Revolving Lender shall not exceed the lesser of (A) such Lender's Revolving Commitment and (B) such Revolving Lender's Applicable Percentage of the Borrowing Base – Revolving Credit.

Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01, prepay under Section 2.05, and reborrow Committed Revolving Loans under this Section 2.01. Committed Revolving Loans may be (i) Canadian Prime Rate Loans if denominated in Canadian Dollars, or (ii) U.S. Base Rate Loans if denominated in U.S. Dollars, as further provided herein.

(d) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(c) hereof.

(e) The Agent shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves.

(f) Upon completion of the Target Acquisition, the Target and each of its Subsidiaries will guarantee the obligation of the Borrowers hereunder and will grant to the Agent a first priority perfected Lien over all of its present and future assets, all pursuant to documentation satisfactory to the Agent in its Permitted Discretion.

2.02 Borrowings and Conversions of Committed Revolving Loans.

(a) Committed Revolving Loans and the Term Loans (or any portion thereof) shall be (i) Canadian Prime Rate Loans if denominated in Canadian Dollars, or (ii) U.S. Base Rate Loans if denominated in U.S. Dollars as the Lead Borrower may request subject to and in accordance with this Section 2.02. Subject to the other provisions of this Section 2.02, Revolving Credit Borrowings of more than one Type may be incurred at the same time.

(b) Each Revolving Credit Borrowing and each conversion of Committed Revolving Loans or the Term Loans (or any portion thereof) from one Type to the other shall be made upon the Lead Borrower's irrevocable written notice to the Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Lead Borrower. Each such notice must be received by the Agent not later than 12:00 p.m. one (1) Business Day prior to the requested date of any Borrowing of Canadian Prime Rate Loans or U.S. Base Rate Loans. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to U.S. Base Rate Loans shall be in a principal amount of

C\$500,000 or US\$500,000, as applicable or a whole multiple of C\$100,000 or US\$100,000, as applicable in excess thereof. Each Committed Loan Notice shall specify (i) whether the Lead Borrower is requesting a Revolving Credit Borrowing or a conversion of Committed Revolving Loans or a Term Loan (or a portion thereof) from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day), (iii) the principal amount and currency of Committed Revolving Loans to be borrowed, or the principal amount and currency of Committed Revolving Loans or a Term Loan (or portion thereof) to be converted, and (iv) the Type of Committed Revolving Loans to be borrowed or to which existing Committed Revolving Loans or the Term Loans (or portion thereof) are to be converted. If the Lead Borrower fails to specify a Type of Committed Revolving Loan or the Term Loans (or portion thereof) in a Committed Loan Notice, then the applicable Committed Revolving Loans or portion of the Term Loans shall automatically be made as, or converted to, a Canadian Prime Rate Loan (if denominated in Canadian Dollars) or a U.S. Base Rate Loan (if denominated in U.S. Dollars).

(c) Following receipt of a Request for Borrowing, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Revolving Loans or a Term Loan (or portion thereof). In the case of a Committed Revolving Borrowing, each Lender shall make the amount of its Committed Revolving Loan available to the Agent in immediately available funds in the specified currency at the Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Borrowing, Section 4.01), the Agent shall use reasonable efforts to make all funds so received available to the Borrowers in like funds by no later than 4:00 p.m. on the day of receipt by the Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Agent by the Lead Borrower.

(d) The Agent, without the request of the Lead Borrower, may advance as a Revolving Loan any interest, fee, service charge (including direct wire fees), Credit Party Expenses, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account notwithstanding that an Overadvance may result thereby. The Agent shall advise the Lead Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Agent shall not constitute a waiver of the Agent's rights and the Borrowers' obligations under Section 2.05(c). Any amount which is added to the principal balance of the Loan Accounts as provided in this Section 2.02(d) shall bear interest at the interest rate then and thereafter applicable to U.S. Base Rate Loans, as applicable.

(e) Each Borrowing shall be made by the Lenders pro rata in accordance with their respective Applicable Percentage with respect to the applicable type of Borrowing. The failure of any Lender to make any Loan shall neither relieve any other Lender of its obligation to fund its Loan in accordance with the provisions of this Agreement nor increase the obligation of any such other Lender.

(f) At any time that Canadian Prime Rate Loans or U.S. Base Rate Loans are outstanding, the Agent shall notify the Lead Borrower and the Lenders of any change in Salus's prime rate used in determining the applicable interest rate.

(g) The Agent and the Revolving Lenders shall have no obligation to make any Loan if an Overadvance would result. The Agent may, in its Permitted Discretion, make Permitted Overadvances without the consent of the Borrowers or the Lenders and the Borrowers and each Lender shall be bound thereby. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Canadian Prime Rate Loan or a U.S. Base

Rate Loan (depending on the currency in which it is made) and an Obligation and shall be repaid by the Borrowers in accordance with the provisions of Section 2.05(c). The making of any such Permitted Overadvance on any one occasion shall not obligate the Agent or any Revolving Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The Agent shall have no liability for, and no Loan Party or Credit Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Agent with respect to Unintentional Overadvances regardless of the amount of any such Overadvance(s).

2.03 [Reserved.]

2.04 [Reserved.]

2.05 Prepayments.

(a) Subject to the Pricing Letter, the Borrowers may, upon Irrevocable notice from the Lead Borrower to the Agent, at any time or from time to time voluntarily prepay Loans in whole or in part; provided that (i) such notice must be received by the Agent not later than 11:00 a.m. on the date of prepayment of U.S. Base Rate Loans; (ii) any prepayment of U.S. Base Rate Loans shall be in a principal amount of US\$500,000 or a whole multiple of US\$100,000 in excess thereof; (iii) any prepayment of Canadian Prime Rate Loans shall be in a principal amount of C\$500,000 or a whole multiple of C\$100,000 in excess thereof; and (iv) any prepayment of a Term Loan shall be in a minimum amount of US\$500,000 (or the Equivalent Amount in Canadian Dollars) or a whole multiple of US\$100,000 (or the Equivalent Amount in Canadian Dollars) in excess thereof, or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date, currency and amount of such prepayment and the Type(s) of Loans to be prepaid. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Lead Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason the Total Revolver Outstandings at any time exceed the Maximum Revolving Loan Amount as then in effect, the Borrowers shall immediately prepay the Committed Revolving Loans in an aggregate amount equal to such excess.

(c) The Borrower shall prepay the Loans with proceeds and collections received by the Loan Parties to the extent so required under the provisions of Section 6.13 hereof.

(d) The Borrowers shall prepay the Loans in an amount equal to 100% of the Net Cash Proceeds received by a Loan Party on account of a Prepayment Event.

(e) In the event that the annual Combined EBITDA (commencing with the Fiscal Year ended March 31, 2014) exceeds the projected Combined EBITDA for such Measurement Period in any Business Plan (such excess the "Exceeding Amount"), the Borrower shall prepay the Loans in an amount equal to 50% of the Exceeding Amount.

(f) If for any reason there exists at any time a Term Loan A Margin Shortfall, the Borrowers shall immediately prepay an amount equal to such Term Loan A Margin Shortfall.

(g) If for any reason there exists at any time a Term Loan B Margin Shortfall, the Borrowers shall immediately prepay an amount equal to such Term Loan B Margin Shortfall.

(h) Any prepayment made pursuant to Section (b) or (c) above shall be applied, first, ratably to the outstanding Committed Revolving Loans; next, ratably to the outstanding Term Loan A; next, ratably to the outstanding Term Loan B, and the amount remaining, if any, after the prepayment in full of all Loans outstanding at such time may be retained by the Borrowers for use in the ordinary course of its business. Any prepayment made pursuant to Section (d) or (e) above shall be applied, first, ratably to the outstanding Term Loan A; next, ratably to the outstanding Term Loan B; next, ratably to the outstanding Committed Revolving Loans and the amount remaining, if any, after the prepayment in full of all Loans outstanding at such time may be retained by the Borrowers for use in the ordinary course of its business. Any prepayment made pursuant to Section (f) above shall be applied ratably to the outstanding Term Loan A. Any prepayment made pursuant to Section (g) above shall be applied ratably to the outstanding Term Loan A or the outstanding Term Loan B, as determined by the Agent in its sole discretion.

2.06 Termination or Reduction of Commitments.

(a) Subject to the Pricing Letter, the Borrowers may, upon irrevocable notice from the Lead Borrower to the Agent, terminate the Aggregate Revolving Commitments or the Term Commitments or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of C\$10,000,000 or any whole multiple of C\$1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolver Outstandings would exceed the Aggregate Revolving Commitments.

(b) The Agent will promptly notify the Lenders of any termination or reduction of the Aggregate Revolving Commitments under this Section 2.06. Upon any reduction of the Aggregate Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Revolving Lender's Applicable Percentage of such reduction amount. All fees (including, without limitation, commitment fees and Early Termination Fees) and interest in respect of the Aggregate Revolving Commitments accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) The Borrowers shall repay to the Revolving Lenders on the Termination Date the aggregate principal amount of Committed Revolving Loans outstanding on such date, along with accrued but unpaid interest and all other Obligations outstanding with respect to the Committed Revolving Loans.

(b) The Borrowers shall repay to the Term Lenders the outstanding principal amount of the Term Loans in installments in the amounts and on the dates set forth below and in full on the Termination Date.

Date	Term A Loan Principal Amount	Term B Loan Principal Amount
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September 30, 2013	\$125,000	\$325,000
December 31, 2013	\$125,000	\$325,000
March 31, 2014	\$125,000	\$325,000
June 30, 2014	\$125,000	\$325,000
September 30, 2014	\$250,000	\$325,000
December 31, 2014	\$250,000	\$325,000
March 31, 2015	\$250,000	\$325,000
June 30, 2015	\$250,000	\$325,000
September 30, 2015	\$250,000	\$487,500
December 31, 2015	\$250,000	\$487,500
March 31, 2014	\$250,000	\$487,500

The Borrowers shall repay to the Term Lenders on the Termination Date the aggregate principal amount of the Terms Loans outstanding on such date, along with accrued but unpaid interest and all other Obligations outstanding with respect to the Term Loans.

(c) Without limiting Section 1.07, if Agent receives any payment from or on behalf of a Loan Party in any currency other than the currency in which the Obligation is denominated, Agent may convert the payment (including the proceeds of realization upon any Collateral) into the currency in which such Obligation is denominated at the "Spot Rate" (as such term is defined in Section 1.07).

2.08 Interest.

(a) Subject to the provisions of Section 2.08(b) and (c) below, (i) each Committed Revolving Loan which is a U.S. Base Rate Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the U.S. Base Rate plus the Applicable Margin; (ii) each Committed Revolving Loan which is a Canadian Prime Rate Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin; (iii) each Term Loan A shall bear interest on the outstanding principal amount thereof at the Term Loan A Interest Rate then in effect and (iv) each Term Loan B shall bear interest on the outstanding principal amount thereof at the Term Loan B Interest Rate then in effect.

(b)

(i) If any amount payable under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall, subject to the *Interest Act* (Canada) and the provisions of this Section, thereafter bear interest at a fluctuating interest rate

per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Agent may, and upon the request of the Required Lenders shall, notify the Lead Borrower that all outstanding Obligations shall, subject to the *Interest Act* (Canada) and the provisions of this Section, thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) If any provision of this Agreement or of any of the other Loan Documents would obligate the Borrowers or any other Loan Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by such Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by such Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to such Lender, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to such Lender which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Any amount or rate of interest referred to in this Section shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

(e) For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of a 360 year or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.

2.09 Fees. The Borrower shall pay to the Agent the fees stipulated in the Pricing Letter, at the times and in the amounts set forth therein.

2.10 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360-day year, in each case and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made. For purposes of the calculation of interest on the Loans and the

Outstanding Amount, all payments made by or on account of the Borrowers shall be deemed to have been applied to the Loans one (1) Business Day after receipt of such payments by the Agent (as such receipt is determined pursuant to Section 2.12). Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by the Agent (the "Loan Account") in the ordinary course of business. In addition, each Lender may record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Obligations due to such Lender. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Borrowings made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, the Borrowers shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Committed Revolving Loans or portion of a Term Loan, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrowers will issue, in lieu thereof, a replacement Note in favour of such Lender, in the same principal amount thereof and otherwise of like tenor.

(b) Agent shall render monthly statements regarding the Loan Account to the Lead Borrower including principal, interest, fees, and including an itemization of all charges and expenses constituting Credit Party Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Credit Parties unless, within thirty (30) days after receipt thereof by the Lead Borrower, the Lead Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements.

2.12 Payments Generally; Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defence, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent shall be deemed received on the next succeeding Business Day (if received before 2:00 p.m.) or the second succeeding Business Day (if received after 2:00 p.m.) and any applicable interest or fee shall continue to accrue and shall be calculated pursuant to Section 2.10. If any payment to be made by the Borrowers shall come due on a day other

than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Agent. Unless the Agent shall have received notice from a Revolving Lender prior to 12:00 noon on the date of such Borrowing that Lender will not make available to the Agent such Lender's share of such Borrowing, the Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or in the case of a Borrowing of U.S. Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Agent, then the applicable Lender and the Borrowers severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Committed Revolving Loans. If the Borrowers and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly credit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Agent, then the amount so paid shall constitute such Lender's portion of such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) Payments by Borrowers; Presumptions by Agent. Unless the Agent shall have received notice from the Lead Borrower prior to the time at which any payment is due to the Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or the Lead Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof (subject to the provisions of the last paragraph of Section 4.02 hereof), the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Revolving Lenders hereunder to make Committed Revolving Loans, and the obligations of the Term Lenders hereunder to make Term Loans are several and not joint. The failure of any Term Lender to make its portion of a Term Loan, or of any Revolving Lender to make any Committed Revolving Loan, on any date required hereunder shall not relieve any other Term Lender or Revolving Lender (as applicable) of its corresponding obligation to do so on such date, and no Term Lender or Revolving Lender (as applicable) shall be responsible for the failure of any other Term Lender or Revolving Lender (as applicable) to so make its portion of a Term Loan or its Committed Revolving Loan (as applicable), to purchase its participation or to make its payment hereunder.

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Credit Party shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, interest on, or other amounts with respect to, any of the Obligations resulting in (a) any Revolving Lender's receiving payment of a proportion of the aggregate amount of Obligations in respect of Committed Revolving Loans greater than its pro rata share thereof as provided herein, or (b) a Term Lender receiving payment of a portion of the aggregate amount of Obligations in respect of a Term Loan greater than its pro rata share thereof as provided herein (including, in each case, as in contravention of the priorities of payment set forth in Section 8.03), then the Credit Party receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Obligations of the other Revolving Lenders or Term Lenders, as applicable, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Credit Parties ratably and in the priorities set forth in Section 8.03, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Loan Parties pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its portion of the Term Loan or its Committed Revolving Loans to any assignee or participant, other than to the Borrowers or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Settlement Amongst Lenders.

(a) The amount of each Revolving Lender's Applicable Percentage of outstanding Committed Revolving Loans shall be computed weekly (or more frequently in the Agent's Permitted Discretion) and shall be adjusted upward or downward based on all

Committed Revolving Loans and repayments of Committed Revolving Loans received by the Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Agent.

(b) The Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Committed Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Agent shall transfer to each Revolving Lender its Applicable Percentage of repayments, and (ii) each Revolving Lender shall transfer to the Agent (as provided below) or the Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Committed Revolving Loans made by each Revolving Lender shall be equal to such Revolving Lender's Applicable Percentage of all Committed Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Agent by the Revolving Lenders and is received prior to 1:00 p.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 1:00 p.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Agent, such Revolving Lender agrees to pay to the Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Agent in connection with the foregoing.

2.15 Increase in Commitments.

(a) Uncommitted Increase

(i) Request for Increase. Provided no Default or Event of Default then exists or would arise therefrom, upon notice to the Agent (which shall promptly notify the Lenders), the Lead Borrower may from time to time, request an increase in the Aggregate Revolving Commitments by an amount not exceeding C\$5,000,000 in the aggregate (the "Revolving Commitment Increase"); provided that (i) any such request for an increase shall be in a minimum amount of C\$1,000,000, and (ii) the Lead Borrower may make a maximum of five such requests. At the time of sending such notice, the Lead Borrower (in consultation with the Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(ii) Lender Elections to Increase. Each Revolving Lender shall notify the Agent within such time period whether or not it agrees to increase its Revolving Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Revolving Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment. For greater certainty, no Lender shall have any obligation to agree to commit to any such Revolving Commitment Increase without its express consent, to be provided in its sole discretion

(iii) Notification by Agent; Additional Lenders. The Agent shall notify the Lead Borrower and each Revolving Lender of the Revolving Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase

and subject to the approval of the Agent, to the extent that the existing Revolving Lenders decline to increase their Revolving Commitments, or decline to increase their Revolving Commitments to the amount requested by the Lead Borrower, the Agent, in consultation with the Lead Borrower, will use its reasonable efforts to arrange for other assignees to become a Revolving Lender hereunder and to issue commitments in an amount equal to the amount of the increase in the Aggregate Revolving Commitments requested by the Lead Borrower and not accepted by the existing Revolving Lenders (and the Lead Borrower may also invite additional assignees to become Revolving Lenders)(each, and "Additional Commitment Lender"), provided, however, that without the consent of the Agent, at no time shall the Commitment of any Additional Commitment Lender be less than C\$1,000,000.

(iv) Effective Date and Allocations. If the Aggregate Revolving Commitments are increased in accordance with this Section 2.15, the Agent, in consultation with the Lead Borrower, shall determine the effective date (the "Revolving Loan Increase Effective Date") and the final allocation of such increase. The Agent shall promptly notify the Lead Borrower and the Lenders of the final allocation of such increase and the Revolving Loan Increase Effective Date and on the Revolving Loan Increase Effective Date (i) the Aggregate Revolving Commitments under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Revolving Commitment Increases, and (ii) Schedule 2.01 shall be deemed modified, without further action, to reflect the revised Revolving Commitments and Applicable Percentages of the Revolving Lenders. Any Revolving Commitment Increase shall be provided on the same terms as the existing Aggregate Revolving Commitments made hereunder.

(b) Conditions to Effectiveness of Commitment Increase. As a condition precedent to such Revolving Commitment Increase, (i) the Lead Borrower shall deliver to the Agent a certificate of each Loan Party dated as of the Revolving Loan Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Revolving Commitment Increase, and (B) in the case of the Borrowers, certifying that, before and after giving effect to such Revolving Commitment Increase, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct on and as of the Revolving Loan Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (2) no Default or Event of Default exists or would arise therefrom, (ii) the Borrowers, the Agent, and any Additional Commitment Lender shall have executed and delivered a Joinder to the Loan Documents in such form as the Agent shall reasonably require; (iii) the Borrowers shall have paid such fees and other Commitment to the Additional Commitment Lenders as the Lead Borrower and such Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees to the Agent as the Lead Borrower and the Agent may agree; (v) if requested by the Agent, the Borrowers shall deliver to the Agent and the Revolving Lenders an opinion or opinions, in form and substance reasonably satisfactory to the Agent, from counsel to the Borrowers reasonably satisfactory to the Agent and dated such date; and (vi) the Borrowers and the Additional Commitment Lenders shall have delivered such other instruments, documents and agreements as the Agent may reasonably have requested. The Borrowers shall prepay any Committed Revolving Loans outstanding on the Revolving Loan Increase Effective Date (and pay any additional amounts required pursuant to Section 2.05)

to the extent necessary to keep the outstanding Committed Revolving Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Revolving Commitments under this Section 2.15.

(c) Conflicting Provisions. This Section shall supersede any provisions in Sections 2.13 or 10.01 to the contrary.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; second, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Committed Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; third, if so determined by the Agent and the Lead Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Committed Revolving Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Committed Revolving Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Committed Revolving Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Committed Revolving Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Committed Revolving Loans of such Defaulting Lender until such time as all Committed Revolving Loans are held by the Lenders pro rata in accordance with the Revolving Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) or (c) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure. If the Lead Borrower and the Agent agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Revolving Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Revolving Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lenders having been a Defaulting Lender.

**ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY;
APPOINTMENT OF LEAD BORROWER**

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrowers shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Agent or the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrowers shall make such deductions and (iii) the Borrowers shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Lead Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of the Agent or a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrowers to a Governmental Authority, the Lead Borrower shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) Treatment of Certain Refunds. If the Agent or any Lender determines, in its Permitted Discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Borrowers have paid additional amounts pursuant to this Section, it shall pay to the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrowers under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrowers, upon the request of the Agent or such Lender, agrees to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender in the event the Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 Reserved.

3.03 Reserved.

3.04 Increased Costs; Reserves on Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender any other condition, cost or expense affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the

rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Lead Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan on the date or in the amount notified by the Lead Borrower including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or

any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Revolving Commitments and repayment of the Term Loans, the Committed Revolving Loans and all other Obligations hereunder.

3.08 Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as such Borrower's agent to obtain Borrowings, the proceeds of which shall be available to each Borrower for such uses as are permitted under this Agreement. As the disclosed principal for its agent, each Borrower shall be obligated to each Credit Party on account of Borrowings so made as if made directly by the applicable Credit Party to such Borrower, notwithstanding the manner by which such Borrowings are recorded on the books and records of the Lead Borrower and of any other Borrower. In addition, each Loan Party other than the Borrowers hereby irrevocably designates and appoints the Lead Borrower as such Loan Party's agent to represent such Loan Party in all respects under this Agreement and the other Loan Documents.

(b) Each Borrower recognizes that credit available to it hereunder is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to discharge all Obligations of each of the other Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Borrowing. Neither the Agent nor any other Credit Party shall have any obligation to see to the application of such proceeds therefrom.

ARTICLE IV
CONDITIONS PRECEDENT TO BORROWINGS

4.01 Conditions of Initial Borrowing. The obligation of each Lender to make its initial Borrowing hereunder is subject to satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals, telecopies or other electronic image scan transmission (e.g., "pdf" or "tif" via e-mail) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party or the Lenders, as applicable, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent:

(i) executed counterparts of this Agreement sufficient in number for distribution to the Agent, each Lender and the Lead Borrower;

(ii) a Note executed by the Borrowers in favour of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Agent may require evidencing (A) the authority of each Loan Party to enter into

this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party and (B) the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to become a party;

(iv) copies of each Loan Party's Organization Documents and such other documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to so qualify in such jurisdiction could not reasonably be expected to have a Material Adverse Effect;

(v) a favourable opinion of Torkin Manes LLP, Pitblado LLP and Fillmore Riley LLP, counsel to the Loan Parties, addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vi) a certificate signed by a Responsible Officer of the Lead Borrower certifying (A) that the conditions specified in Sections 4.02(a) and 4.02(b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) to the Solvency of the Loan Parties as of the Closing Date after giving effect to the transactions contemplated hereby, and (D) either that (1) no consents, licenses or approvals are required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, or (2) that all such consents, licenses and approvals have been obtained and are in full force and effect;

(vii) a duly completed Compliance Certificate as of the Closing Date of the Lead Borrower and its Subsidiaries for the Fiscal Month ended April 30, 2013, signed by a Responsible Officer of the Lead Borrower;

(viii) evidence that all Insurance required to be maintained pursuant to the Loan Documents and all endorsements in favour of the Agent required under the Loan Documents have been obtained and are in effect;

(ix) payoff letters from the respective agents for the lenders under the Existing Credit Agreements and the Existing Target Credit Agreement satisfactory in form and substance to the Agent evidencing that the Existing Credit Agreements and the Existing Target Credit Agreement have been or concurrently with the Closing Date are being terminated, all obligations thereunder are being paid in full, and all Liens securing obligations under the Existing Credit Agreements and the Existing Target Credit Agreement have been or concurrently with the Closing Date are being released;

(x) the Security Documents and certificates evidencing any stock being pledged thereunder, together with undated stock powers executed in blank, each duly executed by the applicable Loan Parties;

(xi) all other Loan Documents, each duly executed by the applicable Loan Parties;

(xii) (A) appraisals (based on net liquidation value) by a third party appraiser acceptable to the Agent of all Inventory of the Loan Parties as requested by the Agent, the results of which are satisfactory to the Agent and (B) a written report regarding the results of a commercial finance examination of the Loan Parties, which shall be satisfactory to the Agent;

(xiii) results of searches or other evidence reasonably satisfactory to the Agent (in each case dated as of a date reasonably satisfactory to the Agent) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances and Liens for which termination statements and releases, satisfactions and discharges of any mortgages, and releases or subordination agreements satisfactory to the Agent are being tendered concurrently with such extension of credit or other arrangements satisfactory to the Agent for the delivery of such termination statements and releases, satisfactions and discharges have been made;

(xiv) (A) all documents and instruments, including PPSA and UCC (to the extent applicable) financing statements, and CCWQ filings required by law or reasonably requested by the Agent to be filed, registered or recorded to create or perfect the first priority Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered or recorded to the satisfaction of the Agent, (B) the DDA Notifications, Credit Card Notifications, and Blocked Account Agreements required pursuant to Section 6.13 hereof, (C) control agreements with respect to the Loan Parties' securities and investment accounts, and (D) Collateral Access Agreements as required by the Agent;

(xv) a duly completed Perfection Certificate signed by a Responsible Officer of the Lead Borrower.

(xvi) such other assurances, certificates, documents, consents or opinions as the Agent reasonably may require; and

(b) After giving effect to (i) the first funding under the Loans and (ii) any charges to the Loan Account made in connection with the establishment of the credit facility contemplated hereby, Availability shall be not less than C\$2,000,000.

(c) The Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the week ended on July 13, 2013 and executed by a Responsible Officer of the Lead Borrower.

(d) The Agent shall be reasonably satisfied that any financial statements delivered to it fairly present the business and financial condition of the Loan Parties and that there has been no Material Adverse Effect since April 30, 2013.

(e) The Agent shall have received and be satisfied with the Borrower's Business Plan and such other information (financial or otherwise) reasonably requested by the Agent.

(f) The Agent shall have received evidence of a cash equity injection received by the Borrower from its shareholders, or funding by way of subordinated unsecured debt from its shareholders (subject to a subordination agreement to be entered into by such

shareholders and the Agent), in an amount not less than C\$11,000,000 on terms and subject to documentation acceptable to the Agent.

(g) There shall not be pending any litigation or other proceeding, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(h) There shall not have occurred any default of any Material Contract of any Loan Party.

(i) The consummation of the transactions contemplated hereby shall not violate any applicable Law or any Organization Document.

(j) All fees and expenses required to be paid to the Agent or the Arranger on or before the Closing Date shall have been paid in full, and all fees and expenses required to be paid to the Lenders on or before the Closing Date shall have been paid in full.

(k) The Borrowers shall have paid all fees, charges and disbursements of counsel to the Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(l) The Agent and the Lenders shall have received all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* and the Patriot Act.

(m) No material changes in governmental regulations or policies affecting any Loan Party or any Credit Party shall have occurred prior to the Closing Date.

(n) There shall not have occurred any disruption or material adverse change in the Canadian or United States financial or capital markets in general that has had, in the reasonable opinion of the Agent, a material adverse effect on the market for loan syndications or adversely affecting the syndication of the Loans.

(o) The Agent and the Lenders shall have received a pro forma Combined opening balance sheet of the Loan Parties as though the Acquisition contemplated by the Acquisition Agreement and all steps in the Steps Memo had been completed.

(p) The Agent and the Lenders shall have received complete and correct copies of the Acquisition Documents, duly executed and delivered by the respective parties thereto, in full force and effect and in form and substance reasonably satisfactory to the Agent and the Lenders.

(q) The Agent and the Lenders shall be satisfied that all of the closing conditions in the Acquisition Agreement have been satisfied without recourse to any provision permitting the waiver by any party thereto of any condition, obligation, covenant or other requirements (except for any modification, supplement or waiver thereof that shall be satisfactory to the Agent and the Lenders).

(r) The ownership, corporate structure and senior management of each Borrower shall be acceptable to the Agent and the Lenders.

(s) The Closing Date shall have occurred on or before July 18, 2013. The Agent shall notify the Lead Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding on the Loan Parties.

Without limiting the generality of the provisions of Section 9.04, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have Consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be Consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Borrowings. The obligation of each Lender to honour any Request for Borrowing (other than a Committed Loan Notice requesting only a conversion of Committed Revolving Loans to the other Type) is subject to the following conditions precedent:

(a) The representations and warranties of each other Loan Party contained in Article V or in any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all respects on and as of the date of such Borrowing, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01;

(b) No Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof;

(c) The Agent shall have received a Request for Borrowing in accordance with the requirements hereof;

(d) No event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred; and

(e) No Overadvance shall result from such Borrowing.

Each Request for Borrowing (other than a Committed Loan Notice requesting only a conversion of Committed Revolving Loans to the other Type) submitted by the Borrower shall be deemed to be a representation and warranty by the Borrowers that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing. The conditions set forth in this Section 4.02 are for the sole benefit of the Credit Parties but until the Required Revolving Lenders otherwise direct the Agent to cease making Committed Revolving Loans, the Revolving Lenders will fund their Applicable Percentage of all Committed Revolving Loans, which are requested by the Lead Borrower and which, notwithstanding the failure of the Loan Parties to comply with the provisions of this Article IV, agreed to by the Agent; provided, however, the making of any such Loans shall not be deemed a modification or waiver by any Credit Party of the provisions of this Article IV on any future occasion or a waiver of any rights or the Credit Parties as a result of any such failure to comply.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

To induce the Credit Parties to enter into this Agreement and to make Loans hereunder, each Loan Party represents and warrants to the Agent and the other Credit Parties that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is a corporation, unlimited liability company, partnership or limited partnership, duly incorporated, organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation, organization, or formation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its jurisdiction of incorporation, organization or formation, its jurisdiction of incorporation, organization, or formation, the location of such Loan Party's chief executive office and domicile (if applicable, and as defined in the CCQ), organization type, organization number, if any, issued by its jurisdiction of incorporation, organization or formation, and its federal employer identification number (if applicable).

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of any Loan Party (other than Liens in favour of the Agent under the Security Documents); or (d) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (a) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof) or (b) such as have been obtained or made and are in full force and effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Financial Statement

Parties as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Financial Statement Parties as of the date thereof, including liabilities for taxes, material commitments and Indebtedness. To the knowledge of the Loan Parties, the Target Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the Combined financial condition of the Target and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all Material Indebtedness and other liabilities, direct or contingent, of the Target and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited Combined balance sheet of the Financial Statement Parties dated April 30, 2013 and the related Combined statements of income or operations for the eight months ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Financial Statement Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all Material Indebtedness and other liabilities, direct or contingent, of the Loan Parties and their Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Material Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) To the best knowledge of the Borrowers, no Internal Control Event exists or has occurred since the date of the Audited Financial Statements that has resulted in or could reasonably be expected to result in a misstatement in any material respect, (i) in any financial information delivered or to be delivered to the Agent or the Lenders, (ii) of the Borrowing Base – Revolving Credit, the Borrowing Base – Term Loan A or the Borrowing Base – Term Loan B, (iii) of covenant compliance calculations provided hereunder or (iv) of the assets, liabilities, financial condition or results of operations of the Financial Statement Parties on a Combined basis.

(e) The Combined pro forma balance sheet of the Financial Statement Parties as at April 30, 2013, and the related Combined pro forma statements of income of the Financial Statement Parties for the seven months then ended, certified by the chief financial officer of the Lead Borrower, copies of which have been furnished to each Lender, fairly present the Combined pro forma financial condition of the Financial Statement Parties as at such date and the Combined pro forma results of operations of the Financial Statement Parties for the period ended on such date, all in accordance with GAAP.

(f) The Combined forecasted balance sheet and statements of income and supplemental cash flow statements of the Financial Statement Parties delivered pursuant to Section 6.01(d) and the Business Plan were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Loan Parties' best estimate of its future financial performance.

(g) The pro forma Combined opening balance sheet of the Loan Parties delivered to Agent pursuant to Section 4.01(o) were prepared in good faith on the basis that the Acquisition contemplated by the Acquisition Agreement and all steps in the Steps Memo had been completed.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of its properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in Schedule 5.06, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect, and since the Closing Date, there has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 5.06.

5.07 No Default. No Loan Party or any Subsidiary is in default under or with respect to, or party to, any Material Contract or any Material Indebtedness. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens.

(a) Each of the Loan Parties and each Subsidiary thereof has good record and marketable title in fee simple to or valid leasehold interests in, all Real Estate necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Loan Parties and each Subsidiary has good and marketable title to, valid leasehold interests in, or valid licenses to use all personal property and assets material to the ordinary conduct of its business.

(b) Schedule 5.08(b)(1) sets forth the complete address of all Real Estate that is owned by the Loan Parties, together with a list of the holders of any mortgage or other Lien thereon as of the Closing Date. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Estate owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Encumbrances. Schedule 5.08(b)(2) sets forth the complete address of all Leases of the Loan Parties, together with a list of the lessor and its contact information with respect to each such Lease as of the Closing Date. Each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof.

(c) Schedule 7.01 sets forth a complete and accurate list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries, showing as of the Closing Date the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto. The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Permitted Encumbrances.

(d) Schedule 7.02 sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

(e) Schedule 7.03 sets forth a complete and accurate list of all Indebtedness of each Loan Party or any Subsidiary of a Loan Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity thereof.

(f) Schedule 7.04 set forth a list of locations where each Loan Party's inventory and equipment (other than inventory or equipment in transit) and books and records concerning the Collateral are kept (which Schedule 7.04 shall be promptly updated by the Loan Parties upon notice to Agent as permanent Collateral locations change). Each Loan Party that keeps records in the Province of Quebec relating to Collateral keeps a duplicate copy thereof at a location outside the Province of Quebec, as listed on Schedule 7.04.

5.09 Environmental Compliance.

(a) No Loan Party or any Subsidiary thereof (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned or operated by any Loan Party or any Subsidiary thereof is listed or proposed for listing on any list of properties containing Hazardous Materials maintained by any Governmental Authority or, to the knowledge of the Loan Parties, is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or Subsidiary thereof; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof.

(c) No Loan Party or any Subsidiary thereof is undertaking, and no Loan Party or any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any Subsidiary thereof have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

5.10 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Closing Date. Each insurance

policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid. The insurance maintained by the Loan Parties and their Subsidiaries does not include store-level theft insurance, but theft insurance is maintained in respect of each manufacturing and distribution facility.

5.11 Taxes. Except as set forth in Schedule 5.11, the Loan Parties and their Subsidiaries have filed all Federal, provincial, territorial, state and other material tax returns and reports required to be filed, and have paid all Taxes levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings being diligently conducted, for which adequate reserves have been provided in accordance with GAAP, as to which Taxes no Lien has been filed and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect.

5.12 Pension Plans. Schedule 5.12 lists all Benefit Plans maintained or contributed to by each Loan Party. No Loan Party maintains any Pension Plan.

5.13 Subsidiaries; Equity Interests. The Loan Parties have no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, which Schedule sets forth the legal name, jurisdiction of incorporation or formation and authorized Equity Interests of the Loan Parties and each such Subsidiary (both before and immediately following the Acquisition contemplated by the Acquisition Agreement and the completion of all steps in the Steps Memo). All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. Except as set forth in Schedule 5.13, there are no outstanding rights to purchase any Equity Interests in any Loan Party or Subsidiary. The Loan Parties have no equity investments in any other corporation or entity other than those specifically disclosed in Part(b) of Schedule 5.13 (both before and immediately following the Acquisition contemplated by the Acquisition Agreement and the completion of all steps in the Steps Memo). All of the outstanding Equity Interests in the Loan Parties have been validly issued, and are fully paid and non-assessable and are owned in the amounts specified on Part (c) of Schedule 5.13 free and clear of all Liens except for those created under the Security Documents. The copies of the Organization Documents of each Loan Party and each amendment thereto provided pursuant to Section 4.01 are true and correct copies of each such document, each of which is valid and in full force and effect.

5.14 Reserved.

5.15 Disclosure. Each Loan Party has disclosed to the Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each of the Loan Parties and each Subsidiary is in compliance (a) in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or

(ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, and (b) with Sections 10.17 and 10.18 hereof.

5.17 Intellectual Property; Licenses, Etc. The Loan Parties and their Subsidiaries own, or possess the right to use, all of the Intellectual Property, licenses, permits and other authorizations that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Lead Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by any Loan Party or any Subsidiary infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Lead Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Labour Matters. There are no strikes, lockouts, slowdowns or other material Labour disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. The hours worked by and payments made to employees of the Loan Parties comply with all applicable federal, provincial, territorial, state, local or foreign Law dealing with such matters. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.18, no Loan Party or any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation or union certification proceedings pending or, to any Loan Party's knowledge, threatened to be filed with any applicable labour relations board, organization or similar Governmental Authority, and no labour organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition or certification. There are no complaints, unfair labour practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

5.19 Security Documents.

(a) The Security Agreement creates in favour of the Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement), the enforceability of which is subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The financing statements, releases and other filings are in appropriate form and have been or will be filed in the offices specified in Schedule II of the Security Agreement. Upon such filings and/or the obtaining of "control" (as defined in the PPSA), the Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all Collateral that may be perfected by filing, recording or registering a financing statement or analogous document (including without limitation the proceeds of such Collateral subject to the limitations relating to such proceeds in the PPSA) or by obtaining control, under the PPSA (in effect on the date this representation is made) in each case prior and superior in right to any other Person.

(b) When the Security Agreement (or a short form thereof) is filed in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings in appropriate form are filed in the offices specified in Schedule II of the Security Agreement, the Agent shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property (as defined in the Security Agreement) in which a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the Canadian Intellectual Property Office, the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

5.20 Solvency. After giving effect to the Target Acquisition and the other transactions contemplated by this Agreement, and before and after giving effect to each Borrowing, the Loan Parties, on a Combined basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

5.21 Deposit Accounts; Credit Card Arrangements.

(a) Annexed hereto as Schedule 5.21(a) is a list of all DDAs maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each DDA (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; (iii) a contact person at such depository, and (iv) the identification of each Blocked Account Bank.

(b) Annexed hereto as Schedule 5.21(b) is a list describing all arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

5.22 Brokers. Except as disclosed in Schedule 5.22, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.23 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

5.24 Material Contracts. Schedule 5.24 sets forth all Material Contracts to which any Loan Party is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Agent on or before the Closing Date. The Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract.

5.25 Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labour dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not

covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.26 Acquisition.

(a) (i) No Loan Party nor, to the best knowledge of each Loan Party, any other party to any Acquisition Document is in default of any of its material obligations under such Acquisition Document, (ii) all written information with respect to the Target Acquisition and the business and assets to be acquired in connection with the Target Acquisition furnished to the Agent by any Loan Party or on behalf of any Loan Party, was, at the time the same were so furnished, complete and correct in all material respects, or has been subsequently supplemented by other written information, to the extent necessary to give the Agent and Lenders a true and accurate knowledge of the subject matter of each of them in relation to the Target Acquisition and the business and assets to be acquired in connection with the Target Acquisition, in all material respects, (iii) no representation, warranty or statement made by any Loan Party or, to the best knowledge of each Loan Party, any other party to any Acquisition Document, at the time they were made in any Acquisition Document, or any agreement, certificate, statement or document required to be delivered pursuant to any Acquisition Document, contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained in such Acquisition Documents not misleading in light of the circumstances in which they were made, and (iv) after giving effect to the transactions contemplated by this Agreement, the Acquisition Agreement and the other Acquisition Documents and Loan Documents, the Lead Borrower will have good title to the equity securities, shareholder loans and other assets to be purchased pursuant to the Acquisition Documents, free and clear of all Liens other than Permitted Encumbrances.

(b) The Loan Parties did not and will not incur or assume any liabilities or obligations pursuant to or in connection with the Acquisition other than those liabilities and obligations set forth on Schedule 5.26 hereto.

(c) The Loan Parties have delivered to the Agent a complete and correct copy of each Acquisition Document, including all schedules and exhibits thereto. Such Acquisition Documents sets forth the entire agreement and understanding of the parties thereto relating to the subject matter thereof, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby. The execution, delivery and performance of each such Acquisition Document has been duly authorized by all necessary action (including, without limitation, the obtaining of any consent of shareholders or other holders of Equity Interests or Indebtedness of each Person party thereto as required by law or by any applicable corporate or other organizational documents) on the part of each such Person. No authorization or approval or other action by, and no notice to filing with or license from, any Governmental Authority is required for the consummation of the transactions contemplated by the Acquisition Documents other than such as have been obtained on or prior to the Closing Date. Each Acquisition Document is the legal, valid and binding obligation of each Loan Party thereto and, to the best knowledge of any Loan Party, the other parties thereto, enforceable against such parties in accordance with its terms.

(d) All aspects of the transactions contemplated by the Acquisition Documents have been effected in all material respects in accordance with terms of the Acquisition Documents and applicable Law. At the time of consummation thereof, all consents and approvals of, and filings and registrations with, and all other actions in respect of, all Government Authorities required in order to consummate the transactions in accordance with

the terms of the Acquisition Documents and all applicable Laws shall have been obtained, given, filed or taken and are in full force and effect (or effective judicial relief with respect thereto has been obtained). Additionally, at the time of consummation thereof, there does not exist any judgment, order or injunction prohibiting or imposing material adverse conditions upon the consummation of the transactions contemplated by the Acquisition Documents.

5.27 Business Plan. The Borrowers are operating their business in all material respects in a manner consistent with the Business Plan most recently delivered pursuant to Section 6.01(c) and accepted by the Agent in its Permitted Discretion.

5.28 Personally Identifiable Information. Borrowers maintain a policy for the treatment, handling and storage of consumer information and personally identifiable information in accordance with applicable Laws and a true, accurate and complete copy of the current version thereof has been provided to the Agent.

5.29 Anti-Bribery/Anti-Corruption. Each of the Loan Parties is now and at all times has been in compliance with all applicable anti-bribery or anti-corruption laws, and will remain in compliance with such laws. No Loan Party will authorize, offer or make payments directly or indirectly to any Person that would result in a violation of any applicable anti-bribery or anticorruption laws. No part of the proceeds of the Loans will be used by the Loan Parties, directly or indirectly, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended or in violation of the *Corruption of Foreign Public Officials Act (Canada)*, as amended; or (ii) for any purpose that could constitute a violation of applicable anti-bribery or anti-corruption laws in Canada, the United States or any other applicable jurisdiction.

5.30 The Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada). The Lead Borrower is in compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (the "PCMLTFA") and all applicable regulations thereunder. Without limiting the generality of the foregoing, the Lead Borrower has written anti-money laundering/anti-terrorist financing compliance policies and procedures in place (an "AML Program") which reflect the legislative requirements of the PCMLTFA and the regulations thereunder and which: (i) are up to date and have been approved by a senior officer (as defined in the PCMLTFA) of the Lead Borrower, (ii) assess and document the money laundering/terrorist financing risks of the Lead Borrower taking into consideration: (a) its clients and business relationships; (b) its products and delivery channels; (c) the geographic location of its activities, and (d) any other relevant factors, and (iii) include provisions in respect of filing large cash transactions and suspicious transactions, keeping required records and ascertaining identity of customers. The AML Program also includes a written ongoing compliance training program for all employees, agents or other persons authorized to act on the Lead Borrower's behalf. The Lead Borrower institutes and documents a review of its AML Program to test its effectiveness every two years.

ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), the Loan Parties shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Agent, in form and detail satisfactory to the Agent:

(a) as soon as available, but in any event within 120 days after the end of each Fiscal Year of the Lead Borrower (commencing with the Fiscal Year ended 2013), a Combined balance sheet of the Financial Statement Parties as at the end of such Fiscal Year, and the related Combined statements of income or operations for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, such Combined statements to be audited and accompanied by a report and unqualified opinion of an Accounting Firm of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and such statements to be certified by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the Combined financial statements of the Financial Statement Parties;

(b) [Reserved];

(c) as soon as available, but in any event within 30 days after the end of each of the Fiscal Months of each Fiscal Year of the Financial Statement Parties (commencing with the Fiscal Month ended June 30, 2013), a Combined balance sheet of the Financial Statement Parties as at the end of such Fiscal Month, and the related Combined statements of income or operations and supplemental cash flow information as requested by Lender for such Fiscal Month, and for the portion of the Financial Statement Parties' Fiscal Year then ended, setting forth in each case in comparative form the figures for (A) such period set forth in the projections delivered pursuant to Section 6.01(d) hereof, (B) beginning with the Combined statements for the period ending August 31, 2013, the corresponding Fiscal Month of the previous Fiscal Year and (C) beginning with the Combined statements for the period ending August 31, 2013, the corresponding portion of the previous Fiscal Year, all in reasonable detail, such statements to be certified by a Responsible Officer of the Lead Borrower as fairly presenting the financial condition, results of operations and supplemental cash flow information as requested by Lender of the Financial Statement Parties as of the end of such Fiscal Month in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such statements to be certified by a Responsible Officer of the Lead Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the financial statements of the Financial Statement Parties;

(d) as soon as available, but in any event at least 30 days before the end of each Fiscal Year of the Financial Statement Parties, the Business Plan of the Financial Statement Parties and its Subsidiaries on a monthly basis for the immediately following Fiscal Year (including the Fiscal Year in which the Maturity Date occurs), and as soon as available, any significant revisions to the Business Plan with respect to such Fiscal Year.

6.02 Certificates; Other Information. Deliver to the Agent in form and detail satisfactory to the Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its Accounting Firm certifying such financial statements and stating that in making the examination necessary for their certification of such financial statements, such Accounting Firm has not obtained any knowledge of the existence of any Default or Event of Default or, if any such Default or Event of Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and 6.01(c) (commencing with the delivery of the financial statements for the Fiscal Month ended June 30, 2013), a duly completed Compliance Certificate signed by a Responsible Officer of the Lead Borrower, and in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Lead Borrower shall also provide a statement of reconciliation conforming such financial statements to GAAP;

(c) on the Wednesday of each Fiscal Week (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate showing the Borrowing Base – Revolving Credit (and in respect of the Borrowing Base Certificate delivered on the first Tuesday of each Fiscal Month, the Borrowing Base – Term Loan A and Borrowing Base – Term Loan B) as of the close of business as of the last day of the immediately preceding week (provided that the Appraised Value percentage applied to the Eligible Inventory set forth in each Borrowing Base Certificate shall be the percentage set forth in the most recent appraisal obtained by the Agent pursuant to Section 6.10 hereof for the applicable month in which such Borrowing Base Certificate is delivered), each Borrowing Base Certificate to be certified as complete and correct by a Responsible Officer of the Lead Borrower and accompanied by all applicable system generated documentation supporting the information contained within the Borrowing Base Certificate, including but not limited to inventory reporting inclusive of inventory mix by category and/or department and, where applicable, accounts receivable detail documentation and any additional documentation reasonably requested by the Agent;

(d) promptly upon receipt, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by its Accounting Firm in connection with the accounts or books of the Loan Parties or any Subsidiary, or any audit of any of them, including, without limitation, specifying any Internal Control Event;

(e) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Loan Parties, and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party may file or be required to file with any securities commission or stock exchange, and in any case not otherwise required to be delivered to the Agent pursuant hereto;

(f) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule;

(g) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(h) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Loan Parties, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for each Loan Party and its Subsidiaries and containing such additional information as the Agent, or any Lender through the Agent, may reasonably specify;

(i) promptly after the Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness;

(j) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from any securities commission or other Governmental Authority or any stock exchange concerning any proceeding with, or investigation or possible investigation or other inquiry by such Governmental Authority regarding financial or other operational results of any Loan Party or any Subsidiary thereof or any other matter which, if adversely determined, could reasonably be expected to have a Material Adverse Effect; and

(k) promptly, such additional information regarding the business affairs, financial condition or operations of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Agent or any Lender may from time to time reasonably request.

6.03 Notices. Promptly notify the Agent:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of any breach or non-performance of, or any default under, a Material Contract or with respect to Material Indebtedness of any Loan Party or any Subsidiary thereof;

(d) of any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority or the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;

(e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(f) of any change in any Loan Party's senior executive officers;

(g) of the discharge by any Loan Party of its present Accounting Firm or any withdrawal or resignation by such Accounting Firm;

(h) of any collective bargaining agreement or other labour contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;

(i) of the filing of any Lien for unpaid Taxes against any Loan Party;

(j) of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of expropriation or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;

(k) of any transaction of the nature contained in Article VII hereof; and

(l) of any failure by any Loan Party to pay rent at (i) any distribution centre or warehouse; or (ii) five percent (5)% or more of such Loan Party's locations or (iii) any of such Loan Party's locations if such failure continues for more than ten (10) days following the day on which such rent first came due and such failure would be reasonably likely to result in a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth details of the occurrence referred to therein and stating what action the Lead Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by law become a Lien upon its property; and (c) all indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such indebtedness, except, in each case, where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, (d) no Lien has been filed with respect thereto and (e) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Nothing contained herein shall be deemed to limit the rights of the Agent with respect to determining Reserves pursuant to this Agreement.

6.05 Preservation of Existence, Etc. Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its Intellectual Property, except to the extent such Intellectual Property is no longer used or useful in the conduct of the business of the Loan Parties.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies having an A.M. Best Rating of at least A-, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Agent.

(b) Cause fire and extended coverage policies maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding improvements to Real Estate) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the

Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-Insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(c) Cause commercial general liability policies to be endorsed to name the Agent as an additional Insured.

(d) Cause business interruption policies to name the Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the Insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Agent, (ii) a provision to the effect that none of the Loan Parties, the Agent, any Lender or any other Credit Party shall be a co insurer and (iii) such other provisions as the Agent may reasonably require from time to time to protect the interests of the Credit Parties.

(e) Cause each such policy referred to in this Section 6.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the Insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Agent.

(f) Deliver to the Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent, including an insurance binder) together with evidence satisfactory to the Agent of payment of the premium therefor.

(g) Maintain for themselves and their Subsidiaries, a Directors and Officers insurance policy, and a "Blanket Crime" policy including employee dishonesty, forgery or alteration, theft, disappearance and destruction, robbery and safe burglary, property, and computer fraud coverage with responsible companies in such amounts as are customarily carried by business entities engaged in similar businesses similarly situated, and will upon request by the Agent furnish the Agent certificates evidencing renewal of each such policy.

(h) Permit any representatives that are designated by the Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby.

(i) None of the Credit Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Credit Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Credit Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Credit Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Credit Party under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Credit Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; (b) such contest effectively suspends enforcement of the contested Laws, and (c) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records; Accountants.

(a) (i) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

(b) At all times retain an Accounting Firm which is reasonably satisfactory to the Agent and shall instruct such Accounting Firm to cooperate with, and be available to, the Agent or its representatives to discuss the Loan Parties' financial performance, financial condition, operating results, controls, and such other matters, within the scope of the retention of such Accounting Firm, as may be raised by the Agent.

6.10 Inspection Rights.

(a) Permit representatives and independent contractors of the Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and Accounting Firm, and permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct evaluations of the Business Plan, forecasts and cash flows, all at the expense of the Loan Parties and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Lead Borrower; provided, however, that when a Default or Event of Default exists the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice. Notwithstanding the foregoing, the Borrowers acknowledge and agree that for a period of three months from the Closing Date (or such longer period as the Agent shall in its sole discretion require) the Agent has appointed Consensus Services LLC (or such replacement consultant as Agent may appoint in its Permitted Discretion) as a consultant to conduct such evaluations and that Borrower shall be responsible for the costs, fees and expenses (the "Consultant Costs") incurred by the Agent in respect of such appointment.

(b) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including investment bankers, consultants, accountants, and lawyers) retained by the Agent to conduct commercial finance examinations and other evaluations, including, without limitation, of (i) the Lead Borrower's practices in the computation of the Borrowing Base - Revolving Credit and (ii) the assets included in the Borrowing Base - Revolving Credit and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, and (ii) the Business Plan. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such examinations and evaluations. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake up to two commercial finance

examinations each Fiscal Year at the Loan Parties' expense. Notwithstanding the foregoing, the Agent may cause additional commercial finance examinations to be undertaken (i) as it deems necessary or appropriate, at its own expense or, (ii) if required by Law, if a Default or Event of Default shall have occurred and be continuing or if the Agent determines, in its Permitted Discretion, that an additional commercial finance examination is required, at the expense of the Loan Parties.

(c) Upon the request of the Agent after reasonable prior notice, permit the Agent or professionals (including appraisers) retained by the Agent to conduct appraisals of the Collateral, including, without limitation, the assets included in the Borrowing Base – Revolving Credit. The Loan Parties shall pay the fees and expenses of the Agent and such professionals with respect to such appraisals. Without limiting the foregoing, the Loan Parties acknowledge that the Agent may, in its Permitted Discretion, undertake up to two inventory appraisals each Fiscal Year at the Loan Parties' expense. Notwithstanding the foregoing, the Agent may cause additional appraisals to be undertaken (i) as it deems necessary or appropriate, at its own expense or, (ii) if required by Law, if a Default or Event of Default shall have occurred and be continuing or if the Agent determines, in its Permitted Discretion, that an additional appraisal is required, at the expense of the Loan Parties.

6.11 Use of Proceeds. Use the proceeds of the Borrowings (a) to finance the Target Acquisition, (b) to refinance the Indebtedness of the Loan Parties (including the Target) which is outstanding as at the Closing Date, (c) to fund certain expenses incurred in connection with the Transactions, (d) to finance the acquisition of working capital assets of the Borrowers, including the purchase of inventory and equipment, in each case in the ordinary course of business, (e) to finance Capital Expenditures of the Borrowers, and (f) for general corporate purposes of the Loan Parties, in each case to the extent expressly permitted under applicable Law and the Loan Documents.

6.12 Additional Loan Parties. Notify the Agent at the time that any Person becomes a Subsidiary and promptly thereafter (and in any event within fifteen (15) days), cause any such Person (a) (i) become a Loan Party by executing and delivering to the Agent a Joinder to this Agreement or a Joinder to the Facility Guarantee or such other documents as the Agent shall deem appropriate for such purpose, (ii) grant a Lien to the Agent on such Person's assets of the same type that constitute Collateral to secure the Obligations, and (iii) deliver to the Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and favourable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), and (b) if any Equity Interests or Indebtedness of such Person are owned by or on behalf of any Loan Party, to pledge such Equity Interests and promissory notes evidencing such Indebtedness, in each case in form, content and scope reasonably satisfactory to the Agent. In no event shall compliance with this Section 6.12 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.12 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute, with respect to any Subsidiary, an approval of such Person as a Borrower or permit the Inclusion of any acquired assets in the computation of the Borrowing Base – Revolving Credit.

6.13 Cash Management.

(a) On or prior to the Closing Date:

(i) deliver to the Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit G which have been executed on behalf of such Loan Party and the applicable Credit Card Issuer or Credit Card Processor and delivered to such Loan Party's Credit Card Issuers and Credit Card Processors listed on Schedule 5.21(b); and

(ii) enter into a Blocked Account Agreement satisfactory in form and substance to the Agent with each Blocked Account Bank (collectively, together with the Concentration Account, the "Blocked Accounts"); and

(iii) at the request of the Agent, deliver to the Agent copies of notifications (each, a "DDA Notification") substantially in the form attached hereto as Exhibit H which have been executed on behalf of such Loan Party and delivered to each depository institution listed on Schedule 5.21(a).

(b) From and after the Closing Date, the Loan Parties shall ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to a Blocked Account all of the following:

(i) all amounts on deposit in each DDA (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject DDA by the depository institution at which such DDA is maintained);

(ii) all payments due from Credit Card Processors and Credit Card issuers and proceeds of all credit card charges;

(iii) all cash receipts from the Disposition of Inventory and other assets (whether or not constituting Collateral);

(iv) all proceeds of Accounts; and

(v) all Net Proceeds, and all other cash payments received by a Loan Party from any Person or from any source or on account of any Disposition or other transaction or event, including, without limitation, any Prepayment Event.

(c) Each Blocked Account Agreement shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account controlled by the Agent at Bank of Montreal, Royal Bank of Canada and National Westminster Bank Plc (the "Concentration Account"), of all cash receipts and collections received by each Loan Party from all sources (the "Receipts and Collections"), including, without limitation, the following:

(i) the then entire ledger balance of each Blocked Account (net of any minimum balance, not to exceed C\$2,500 (or the equivalent thereof in any other currency), as may be required to be kept in the subject Blocked Account by the Blocked Account Bank);

(ii) all amounts required to be deposited into the Blocked Accounts pursuant to clause (b) above; and

(iii) any other cash amounts received by any Loan Party from any other source, on account of any type of transaction or event;

provided, however, the Agent may, in its sole discretion, permit the Loan Parties to have one or more "intermediate" Blocked Account Agreements, whereby such agreements would provide, upon notice from the Agent, the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) all Receipts and Collections to another Blocked Account, as opposed to the Concentration Account.

(d) The Concentration Account shall at all times be under the sole dominion and control of the Agent and all funds therein shall be wired to an account specified by Agent no less frequently than daily. The Agent shall cause all funds on deposit in the Concentration Account to be applied to the Obligations, which amounts shall be applied to the Obligations in the order proscribed in either Section 2.05(f) or Section 8.03 of this Agreement, as applicable. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, and (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations. In the event that, notwithstanding the provisions of this Section 6.13, any Loan Party receives or otherwise has dominion and control of any such cash receipts or collections, such receipts and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent.

(e) Upon the request of the Agent, the Loan Parties shall cause bank statements and/or other reports to be delivered to the Agent not less often than monthly, accurately setting forth all amounts deposited in each Blocked Account to ensure the proper transfer of funds as set forth above.

(f) If the Agent does not require DDA Notifications to be delivered on the Closing Date in accordance with Section 6.13(a) above, then the Loan Parties shall, upon the request of the Agent at any time after the Closing Date, deliver to the Agent copies of DDA Notifications, which have been executed on behalf of the applicable Loan Party and delivered to each depository institution listed on Schedule 5.21(a).

6.14 Information Regarding the Collateral.

(a) Furnish to the Agent at least thirty (30) days prior written notice of any change in: (i) any Loan Party's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (ii) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility); (iii) any Loan Party's organizational structure or jurisdiction of incorporation, organization or formation; or (iv) any Loan Party's federal taxpayer identification number or organizational identification number assigned to it by its jurisdiction of incorporation, organization or formation. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the PPSA, CCQ or otherwise that are required in order for the Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

(b) If any of the information on any of the Schedules hereto becomes inaccurate or misleading in any material respect as a result of changes after the Closing Date, the Lead Borrower shall advise the Agent in writing of such revisions or updates as may be necessary or appropriate to update or correct the same. From time to time as may be reasonably requested by the Agent, the Lead Borrower shall supplement each Schedule hereto, or any representation herein or in any other Loan Document, with respect to any matter arising after the Closing Date that, if existing or occurring on the Closing Date, would have been required to be set forth or described in such Schedule or as an exception to such representation or that is necessary to correct any information in such Schedule or representation which has

been rendered inaccurate thereby (and, in the case of any supplements to any Schedule, such Schedule shall be appropriately marked to show the changes made therein). Notwithstanding the foregoing, no supplement or revision to any Schedule or representation shall be deemed the Credit Parties' consent to the matters reflected in such updated Schedules or revised representations nor permit the Loan Parties to undertake any actions otherwise prohibited hereunder or fail to undertake any action required hereunder from the restrictions and requirements in existence prior to the delivery of such updated Schedules or such revision of a representation; nor shall any such supplement or revision to any Schedule or representation be deemed the Credit Parties' waiver of any Default or Event of Default resulting from the matters disclosed therein.

6.15 Physical Inventories.

(a) Cause not less than two physical inventories to be undertaken, at the expense of the Loan Parties, in each twelve (12) month period and periodic cycle counts, in each case consistent with past practices, conducted by such inventory takers as are satisfactory to the Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be satisfactory to the Agent. The Agent, at the expense of the Loan Parties, may participate in and/or observe each scheduled physical count of inventory which is undertaken on behalf of any Loan Party. The Lead Borrower, within five days following the completion of such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) Permit the Agent, in its Permitted Discretion, if any Default or Event of Default exists, to cause additional such inventories to be taken as the Agent determines (each, at the expense of the Loan Parties).

6.16 Environmental Laws. (a) Conduct its operations and keep and maintain its Real Estate in material compliance with all Environmental Laws; (b) obtain and renew all environmental permits necessary for its operations and properties; and (c) implement any and all investigation, remediation, removal and response actions that are appropriate or necessary to maintain the value and marketability of the Real Estate or to otherwise comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under, above, to, from or about any of its Real Estate, provided, however, that neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

6.17 Further Assurances.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any applicable Law, or which the Agent may request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Agent, from time to time upon request, evidence satisfactory to the Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets are acquired by any Loan Party after the Closing Date (other than assets constituting Collateral under the Security Documents that become subject to the perfected first-priority Lien under the Security Documents upon acquisition thereof), notify the Agent thereof, and the Loan Parties will cause such assets to be subjected to a Lien securing the Obligations and will take such actions as shall be necessary or shall be requested by the Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section 6.17, all at the expense of the Loan Parties. In no event shall compliance with this Section 6.17 waive or be deemed a waiver or Consent to any transaction giving rise to the need to comply with this Section 6.17 if such transaction was not otherwise expressly permitted by this Agreement or constitute or be deemed to constitute Consent to the inclusion of any acquired assets in the computation of the Borrowing Base – Revolving Credit.

(c) Use, and cause each of the Subsidiaries to use, their commercially reasonable efforts to obtain lease terms in any Lease entered into by any Loan Party after the Closing Date not expressly prohibiting the recording in the relevant real estate filing office of an appropriate memorandum of lease and the encumbrancing of the leasehold interest of such Loan Party in the property that is the subject of such Lease.

(d) Upon the request of the Agent, cause each of its customs brokers, freight forwarders, consolidators and/or carriers to deliver an agreement (including, without limitation, a Customs Broker/Carrier Agreement) to the Agent covering such matters and in such form as the Agent may reasonably require.

(e) Upon the request of the Agent, cause any of its landlords to deliver a Collateral Access Agreement to the Agent in such form as the Agent may reasonably require.

6.18 Compliance with Terms of Leaseholds. Except as otherwise expressly permitted hereunder, (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party, keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, (c) notify the Agent of any default by any party with respect to such Leases and cooperate with the Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing.

6.19 Material Contracts. (a) Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect in the ordinary course of business, (c) enforce each such Material Contract in accordance with its terms, (d) take all such action to such end as may be from time to time requested by the Agent, (e) upon request of the Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and (f) cause each of its Subsidiaries to do the foregoing.

6.20 Business Plan. Generally operate the business of the Borrowers in all material respects in a manner consistent with the Business Plan most recently delivered pursuant to Section 6.01(d) hereof and accepted by the Agent in its Permitted Discretion, provided that such operation does not guarantee that actual results will match the estimates contained in the Business Plan.

6.21 Compliance with Laws. Ensure that the representations and warranties set forth in Sections 5.29 and 5.30 shall at all times remain true and accurate in all respects.

6.22 Currency Matters. Within 60 days of the initial Borrowing, enter into, and use reasonable commercial efforts to maintain at all times, currency hedge arrangements in respect of the exchange of British pounds sterling for U.S. Dollars satisfactory to Agent.

**ARTICLE VII
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations for which a claim has not been asserted), no Loan Party shall, nor shall It permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired or sign or file or suffer to exist under PPSA, UCC or any similar Law or statute of any jurisdiction a financing statement that names any Loan Party or any Subsidiary thereof as debtor; sign or suffer to exist any security agreement authorizing any Person thereunder to file such financing statement; sell any of its property or assets subject to an understanding or agreement (contingent or otherwise) to repurchase such property or assets with recourse to it or any of its Subsidiaries; or assign or otherwise transfer any accounts or other rights to receive income, other than, as to all of the above, Permitted Encumbrances.

7.02 Investments. Make any Investments, except Permitted Investments.

7.03 Indebtedness. (a) Create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except Permitted Indebtedness; or (b) issue and sell any other Equity Interests unless (i) such Equity Interests shall be issued solely by the Parent and not by a Borrower or any other Subsidiary of a Loan Party, (ii) such Equity Interests provide that all dividends and other Restricted Payments in respect thereof shall be made solely in additional shares of such Equity Interests, in lieu of cash, (iii) such Equity Interests shall not be subject to redemption other than redemption at the option of the Loan Party issuing such Equity Interests and in accordance with the limitations contained in this Agreement, and (iv) all Restricted Payments in respect of such Equity Interests are expressly subordinated to the Obligations.

7.04 Fundamental Changes. Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, (or agree to do any of the foregoing), except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) any Subsidiary which is not a Loan Party may amalgamate or merge with (i) a Loan Party, provided that the Loan Party shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries which are not Loan Parties, provided that when any wholly-owned Subsidiary is merging with another Subsidiary, the wholly-owned Subsidiary shall be the continuing or surviving Person; and

(b) any Subsidiary which is a Loan Party may amalgamate or merge into any Subsidiary which is a Loan Party or into a Borrower, provided that in any merger involving a Borrower, such Borrower shall be the continuing or surviving Person.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except Permitted Dispositions.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any

capital contribution, except that, so long as no Default or Event of Default shall have occurred and be continuing prior to or immediately after giving effect to any action described below or would result therefrom:

(a) each Subsidiary of a Loan Party may make Restricted Payments to any Loan Party;

(b) the Loan Parties and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person; and

(c) J.S.N. Jewellery UK Limited may declare and make dividend payments or other distributions to David Saurymper and Chana Saurymper not to exceed £150,000 (one hundred fifty thousand Pounds Sterling) in the aggregate in any Fiscal Year so long as such individuals remain holders of Class B and Class C ordinary shares in J.S.N. Jewellery UK Limited.

7.07 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness, or make any payment in violation of any subordination terms of any Subordinated Indebtedness, except (a) as long as no Default or Event of Default then exists, regularly scheduled or mandatory repayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (other than Subordinated Indebtedness), and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof or the applicable subordination agreement relating thereto, (b) voluntary prepayments, repurchases, redemptions or defeasances of (i) Permitted Indebtedness (but excluding on account of any Subordinated Indebtedness) as long as the Payment Conditions are satisfied, and (ii) Subordinated Indebtedness in accordance with the subordination terms thereof or the applicable subordination agreement relating thereto, and as long as the Payment Conditions are satisfied, and (c) Permitted Refinancings of any such Indebtedness.

7.08 Change in Nature of Business. Engage in any line of business substantially different from the Business conducted by the Borrowers and their Subsidiaries on the Closing Date or any business substantially related or incidental thereto.

7.09 Transactions with Affiliates. Enter into, renew, extend or be a party to any transaction of any kind with any Affiliate of any Loan Party, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favourable to the Loan Parties or such Subsidiary as would be obtainable by the Loan Parties or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (a) a transaction between or among the Loan Parties, (b) transactions described on Schedule 7.09 hereto, (c) advances for commissions, travel and other similar purposes in the ordinary course of business to directors, officers and employees, (d) the issuance of Equity Interests in the Lead Borrower to any officer, director, employee or consultant of the Lead Borrower or any of its Subsidiaries, (e) the payment of reasonable fees and out-of-pocket costs to directors, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Lead Borrower or any of its Subsidiaries, and (f) any issuances of securities of the Lead Borrower or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans (in each case in respect of Equity Interests in the Lead Borrower of the Parent or any of its Subsidiaries).

7.10 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist

Liens on property of such Person in favour of the Agent; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favour of any holder of Indebtedness permitted under clauses (c) or (f) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.11 Use of Proceeds. Use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry margin stock or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose; or (b) for purposes other than those permitted under this Agreement.

7.12 Amendment of Material Documents. Amend, modify or waive any of a Loan Party's rights under (a) its Organization Documents in a manner adverse to the Credit Parties, or (b) any Material Contract or Material Indebtedness (other than on account of any refinancing thereof otherwise permitted hereunder), in each case to the extent that such amendment, modification or waiver would result in a Default or Event of Default under any of the Loan Documents, would be materially adverse to the Credit Parties or otherwise would be reasonably likely to have a Material Adverse Effect.

7.13 Fiscal Year. Change the Fiscal Year of any Loan Party, or the accounting policies or reporting practices of the Loan Parties, except as required by GAAP, or as may be approved by the Agent.

7.14 Changes In Name or Jurisdiction. Change its (i) name as it appears in official filings in its jurisdiction of incorporation, organization or formation, (ii) jurisdiction of incorporation, organization or formation, (iii) chief place of business or chief executive office or domicile (as defined in the CCQ) or the location of its records concerning the Collateral, without at least thirty (30) days' prior written notice to Agent and the acknowledgement of Agent that all actions required by Agent, including those to continue the perfection of its Liens, have been completed.

7.15 Deposit Accounts; Credit Card Processors. Open new DDAs or Blocked Accounts unless the Loan Parties shall have delivered to the Agent appropriate DDA Notifications (to the extent requested by Agent pursuant to the provisions of Section 6.13(a)(iii) hereof) or Blocked Account Agreements consistent with the provisions of Section 6.13 and otherwise satisfactory to the Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with Credit Card Issuers or Credit Card Processors other than the ones expressly contemplated herein or in Section 6.13 hereof.

7.16 Financial Covenants.

(a) **Leverage Ratio.** For any Measurement Period, permit the Combined Leverage Ratio to be greater than the projected Combined Leverage Ratio for such Measurement Period as set forth in the most recent Business Plan delivered by Lead Borrower (and approved by the Agent) pursuant to Section 6.01(d) hereof. For greater certainty, during the following Measurement Periods, the Combined Leverage Ratio shall not be greater than:

<u>Fiscal Month ended</u>	<u>Maximum Combined Leverage Ratio</u>
June 2013	4.47 : 1
July 2013	4.48 : 1
August 2013	4.72 : 1

September 2013	5.10 : 1
October 2013	5.18 : 1
November 2013	5.64 : 1
December 2013	3.69 : 1
January 2014	3.96 : 1
February 2014	4.00 : 1
March 2014	3.91 : 1
April 2014	4.03 : 1
May 2014	3.78 : 1

(b) **Fixed Charge Coverage Ratio.** At any time when amounts remain owing in respect of either Term Loan, permit the Combined Fixed Charge Coverage Ratio for any Measurement Period to be less than 1.10:1.00.

7.17 Pension Plans. Establish or maintain any Pension Plan.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** The Borrowers or any other Loan Party fails to pay when and as required to be paid herein, (i) any amount of principal of any Loan, or (ii) any interest on any Loan, or any fee due hereunder, or (iii) any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12, 6.13 or 6.14 or Article VII; or (ii) any Guarantor or Personal Guarantor fails to perform or observe any material term, covenant or agreement contained in any Facility Guarantee or Personal Guarantee; or (iii) any of the Loan Parties fails to perform or observe any material term, covenant or agreement contained in any Security Agreement to which it is a party; or

(c) **Other Defaults.** Any Loan Party or Personal Guarantor fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default.** Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (including undrawn

committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement), or (B) falls to observe or perform any other agreement or condition relating to any such Material Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Material Indebtedness or the beneficiary or beneficiaries of any Guarantee thereof (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or

(f) Insolvency Proceedings, Etc. Any Loan Party, the Personal Guarantor or any of their Subsidiaries institutes, consents to (or takes any action to effectuate or consent to) the institution of or declares its intention to institute any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, receiver and manager, mortgagee in possession, sequestrator or similar officer for it or for all or any material part of its property; or a proceeding shall be commenced or a petition filed, without the application or consent of such Person, seeking or requesting the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator receiver and manager, mortgagee in possession, sequestrator or similar officer is appointed and the appointment continues undischarged, undismitted or unstayed for thirty (30) calendar days or an order or decree approving or ordering any of the foregoing shall be entered; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismitted or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party, the Personal Guarantor or any of their Subsidiaries becomes unable or admits in writing its inability or falls generally to pay its debts as they become due in the ordinary course of business, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within ten (10) days after its issuance or levy; or

(h) Judgments. There is entered against any Loan Party, the Personal Guarantor or any of their Subsidiaries (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding C\$250,000 (or the equivalent thereof in any other currency) (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage), or (ii) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect; or

(i) Invalidity of Loan Documents. (i) Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party, the Personal Guarantor or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any

Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or seeks to avoid, limit or otherwise adversely affect any Lien purported to be created under any Security Document; or (ii) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document; or

(j) Change of Control. There occurs any Change of Control; or

(k) Cessation of Business. Except as otherwise expressly permitted hereunder, any Loan Party shall take any action to suspend the operation of its business in the ordinary course, liquidate all or a material portion of its assets or Store locations, or employ an agent or other third party to conduct a program of closings, liquidations or "Going-Out-Of-Business" sales of any material portion of its business; or

(l) Loss of Collateral. There occurs any uninsured loss to any material portion of the Collateral; or

(m) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Contract or fails to observe or perform any other agreement or condition relating to any such Material Contract or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such Material Contract to terminate such Material Contract; or

(n) Indictment. The indictment or institution of any legal process or proceeding against, any Loan Party or any Subsidiary thereof, under any federal, provincial, territorial, state, municipal, or other criminal statute, rule, regulation, order, or other requirement having the force of law for a felony or indictable offense; or

(o) Death or Incapacity. Any Loan Party or the Personal Guarantor that is an individual dies or is declared incompetent by a court of competent jurisdiction.

(p) Guarantee. The termination or attempted termination of any Facility Guarantee except as expressly permitted hereunder or under any other Loan Document; or

(q) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the "Subordinated Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) any Borrower, the Personal Guarantor or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Credit Parties, or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(r) Material Adverse Effect. A Material Adverse Effect shall occur.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the Revolving Commitments of each Revolving Lender to make Committed Revolving Loans to be terminated, whereupon such Revolving Commitments and obligation shall be terminated;

(b) if the Event of Default occurs prior to the Closing Date, declare the Term Commitments of each Term Lender to make Term Loans to be terminated, whereupon such Term Commitments and Obligations shall be terminated;

(c) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(d) capitalize any accrued and unpaid interest by adding such amount to the outstanding principal balance of the Loans, at which time such capitalized amount shall bear interest at the Default Rate;

(e) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties;

(f) The Agent or any Lender may purchase, in any public or private sale conducted by the Agent (whether by judicial action or otherwise) in accordance with Applicable Law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Agent, upon written consent of the Required Lenders, to Credit Bid (in an amount and on such terms as may be directed by the Required Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders.

provided, however, that upon the occurrence of any Event of Default with respect to any Loan Party or any Subsidiary thereof under Section 8.01(f), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without further act of the Agent or any Lender.

No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Law.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall be applied by the Agent in the following order, in each case whether or not such Obligations are allowed or allowable in any bankruptcy or insolvency proceeding or under any Debtor Relief Law:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, Credit Party Expenses and other amounts (including fees, charges

and disbursements of counsel to the Agent and amounts payable under Article III) payable to the Agent;

Next, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Credit Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders (including fees, charges and disbursements of counsel to the Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause payable to them;

Next, to the extent not previously reimbursed by the Lenders, to payment to the Agent of that portion of the Obligations constituting principal and accrued and unpaid interest on any Permitted Overadvances;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Committed Revolving Loans and other Obligations, and fees (excluding any Early Termination Fees), ratably among the Revolving Lenders in proportion to the respective amounts described in this clause payable to them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Committed Revolving Loans, ratably among the Revolving Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loan A and other Obligations, and fees (excluding any Early Termination Fees), ratably among the Term Loan A Lenders in proportion to the respective amounts described in this clause payable to them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Term Loan A, ratably among the Term Loan A Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loan B and other Obligations, and fees (excluding any Early Termination Fees), ratably among the Term Loan B Lenders in proportion to the respective amounts described in this clause payable to them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Term Loan B, ratably among the Term Loan B Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations (including without limitation the cash collateralization of unliquidated indemnification obligations, but excluding any Other Liabilities), ratably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations arising from Cash Management Services to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause held by them;

Next, to payment of that portion of the Obligations constituting unpaid principal of the Term Loans and all other Obligations related to the Term Loans, ratably among the Term Lenders in proportion to the respective amounts described in this clause held by them;

Next, to payment of all other Obligations arising from Bank Products to the extent secured under the Security Documents, ratably among the Credit Parties in proportion to the respective amounts described in this clause held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Loan Parties or as otherwise required by Law.

ARTICLE IX THE AGENT

9.01 Appointment and Authority. Each of the Lenders hereby irrevocably appoints Salus to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof (including, without limitation, acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations), together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Agent and the Lenders, and no Loan Party or any Subsidiary thereof shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the terms "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though they were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Loan Parties or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

The Agent shall not be liable for any action taken or not taken by it (i) with the Consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

The Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Agent by the Loan Parties or a Lender. Upon the occurrence of a Default or Event of Default, the Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Agent shall have received such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Agent be required to comply with any such directions to the extent that the Agent believes that its compliance with such directions would be unlawful.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including, but not limited to, any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless the Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. The Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Agent. The Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Agent. The Agent may at any time give written notice of its resignation to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Lead Borrower, to appoint a successor, which shall be a financial institution with an office in Canada or the United States, or an Affiliate of any such financial institution with an office in Canada or the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Lead Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent hereunder.

9.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. Except as provided in Section 9.12, the Agent shall not have any duty or responsibility to provide any Credit Party with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Agent.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agent or Documentation Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity as the Agent or a Lender hereunder.

9.09 Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Loan Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Agent and the other Credit Parties (including any claim for the

reasonable compensation, expenses, disbursements and advances of the Lenders, the Agent, such Credit Parties and their respective agents and counsel and all other amounts due the Lenders, the Agent and such Credit Parties under Sections 2.03(j), 2.03(k) as applicable, 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, receiver and manager, mortgagee in possession, or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 Collateral and Guarantee Matters. The Credit Parties irrevocably authorize the Agent, at its option and in its Permitted Discretion:

(a) to release any Lien on any property granted to or held by the Agent under any Loan Document (i) upon termination of the Aggregate Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with Section 10.01;

(b) to subordinate any Lien on any property granted to or held by the Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (h) of the definition of Permitted Encumbrances; and

(c) to release any Guarantor from its obligations under the Facility Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Agent at any time, the Applicable Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Facility Guarantee pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Facility Guarantee, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Notice of Transfer. The Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Assumption shall have become effective as set forth in Section 10.06.

9.12 Reports and Financial Statements. By signing this Agreement, each Lender:

(a) agrees to furnish the Agent (and thereafter at such frequency as the Agent may reasonably request) with a summary of all Other Liabilities due or to become due to such Lender. In connection with any distributions to be made hereunder, the Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Agent has received written notice thereof from such Lender;

(b) is deemed to have requested that the Agent furnish such Lender, promptly after they become available, copies of all Borrowing Base Certificates, financial statements and other Borrower Materials required to be delivered by the Lead Borrower hereunder and all commercial finance examinations and appraisals of the Collateral received by the Agent (collectively, the "Reports");

(c) expressly agrees and acknowledges that the Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials, and shall not be liable for any information contained in any Borrower Materials (including any Report);

(d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(e) agrees to keep all Reports and other Borrower Materials confidential in accordance with the provisions of Section 10.07 hereof, and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report and other Borrower Materials in connection with any Borrowings that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (ii) to pay and protect, and indemnify, defend, and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including legal costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

9.13 Agency for Perfection. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agent and the Lenders in assets which, in accordance with applicable Law, can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

9.14 Indemnification of Agent. Without limiting the obligations of the Loan Parties hereunder, the Lenders hereby agree to indemnify the Agent, and any Related Party, as the case may be, ratably according to their Applicable Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent, and their Related Parties in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or

omitted to be taken by the Agent, and their Related Parties in connection therewith; provided, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Agent's, and their Related Parties' gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction.

9.15 Relation among Lenders. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Agent) authorized to act for, any other Lender.

9.16 Co-Syndication Agents; Documentation Agent and Co-Lead Arrangers. Notwithstanding the provisions of this Agreement or any of the other Loan Documents, no Person who is or becomes a Co-Syndication Agent or a Documentation Agent nor the Co-Lead Arrangers shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

9.17 Quebec Collateral. For greater certainty, and without limiting the powers of Agent or any other Person acting as mandatary (agent) of the Agent, each of the Lenders hereby irrevocably constitutes the Agent as the holder of an irrevocable power of attorney (fondé de pouvoir within the meaning of Article 2692 of the CCQ) in order to hold hypothecs and security granted by any Loan Party on property pursuant to the laws of the Province of Québec in order to secure obligations of any Loan Party under any bond, debenture or similar title of indebtedness, issued by any Loan Party, and hereby agrees that Agent, may act as the bondholder and mandatary (i.e. agent) with respect to any shares, capital stock or other securities or any bond, debenture or similar title of indebtedness that may be issued by any Loan Party and pledged in favour of Agent, for the benefit of the Lenders Parties. The execution by the Agent, acting as fondé de pouvoir and mandatary, prior to the Agreement of any deeds of hypothec or other security documents is hereby ratified and confirmed. Notwithstanding the provisions of Section 32 of An Act respecting the special powers of legal persons (Québec), Agent may acquire and be the holder of any bond or debenture issued by any Credit Party (i.e. the fondé de pouvoir may acquire and hold the first bond issued under any deed of hypothec by any Credit Party). The constitution of the Agent as fondé de pouvoir and as bondholder and mandatary with respect to any bond, debenture, shares, capital stock or other securities that may be issued and pledged from time to time to Agent for the benefit of the Lenders, shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of any Lenders' rights and obligations under the Agreement by the execution of an assignment, including an Assignment or other agreement pursuant to which it becomes such assignee or participant, and by each successor Agent by the execution of an assignment or other agreement, or by the compliance with other formalities, as the case may be, pursuant to which it becomes a successor Agent under this Agreement. The Agent acting as fondé de pouvoir shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of Agent in this Agreement, which shall apply mutatis mutandis to the Agent acting as fondé de pouvoir.

ARTICLE X MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no Consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Agent, with the Consent of the Required Lenders, and the Lead Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or Consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) Increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written Consent of such Lender;

(b) as to any Lender, postpone any date fixed by this Agreement or any other Loan Document for (i) any scheduled payment (including the Maturity Date) or mandatory prepayment of principal, interest, fees or other amounts due hereunder or under any of the other Loan Documents without the written Consent of such Lender entitled to such payment, or (ii) any scheduled or mandatory reduction or termination of the Aggregate Revolving Commitments hereunder or under any other Loan Document without the written Consent of such Revolving Lender;

(c) as to any Lender, reduce the principal of, or the rate of interest specified herein on, any Loan held by such Lender, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document to or for the account of such Lender, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written Consent of each Lender entitled to such amount; provided, however, that only the Consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or to reduce any fee payable hereunder;

(d) as to any Lender, change Section 2.13 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written Consent of such Lender;

(e) change any provision of this Section or the definition of "Applicable Lenders", "Required Lenders", "Required Revolving Lenders", or "Required Term Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written Consent of each Lender;

(f) except as expressly permitted hereunder or under any other Loan Document, release, or limit the liability of, any Loan Party without the written Consent of each Lender;

(g) except for Permitted Dispositions, release all or substantially all of the Collateral from the Liens of the Security Documents without the written Consent of each Lender;

(h) Increase the Aggregate Revolving Commitments without the written Consent of each Revolving Lender;

(i) change the definition of the term "Borrowing Base – Revolving Credit", "Borrowing Base – Term Loan A" or "Borrowing Base – Term Loan B" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrowers would be increased without the written Consent of each Lender, provided that the foregoing shall not limit the Permitted Discretion of the Agent to change, establish or eliminate any Reserves;

(j) modify the definition of Permitted Overadvance so as to increase the amount thereof or, except as provided in such definition, the time period for which a Permitted Overadvance may remain outstanding without the written Consent of each Lender; and

(k) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Lien, as the case may be without the written Consent of each Lender;

and, provided further, that (i) no amendment, waiver or Consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (ii) the Pricing Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Deteriorating Lender or Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or Consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Products or Cash Management Services shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any Loan Party.

10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Loan Parties or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

(b) Timing. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(c) Electronic Communications. Notices and other communications to the Loan Parties and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent may, in its Permitted Discretion, agree to accept notices and other communications to it hereunder by electronic

communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) The Internet. In no event shall the Agent or any of its Related Parties (each, an "Agent Party") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Agent's transmission of Borrower Materials through the internet.

(e) Change of Address, Etc. Each of the Loan Parties and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Lead Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(f) Reliance by Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Loan Parties even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Loan Parties. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Credit Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided herein and in the other Loan Documents are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay all Credit Party Expenses.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Agent (and any sub-agent thereof), each other Credit Party, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless (on an after tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs, and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agents thereof) and their Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Credit Party to, a Blocked Account Bank or other Person which has entered into a control agreement with any Credit Party hereunder, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party or any of the Loan Parties' directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by a Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. Without limiting their obligations under Section 9.14 hereof, to the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, each Lender severally agrees to pay to the Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by

unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable on demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of any Agent, the assignment of any Commitment or Loan by any Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its Permitted Discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its Applicable Percentage (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written Consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with Section 10.06(b), (ii) by way of participation in accordance with the provisions of subsection Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans; provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts

(A) In the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) In any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than C\$5,000,000 (or the equivalent thereof in U.S. Dollars) unless each of the Agent and, so long as no Default or Event of Default has occurred and is continuing, the Lead Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Lead Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Default or Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; and

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of C\$3,500, provided, however, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled

to the benefits of Sections 3.01, 3.04 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from the Lenders having been a Defaulting Lender. Upon request, the Borrowers (at their expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Loan Parties, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Agent, sell participations to any Person (other than a natural person or the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any Participant shall agree in writing to comply with all confidentiality obligations set forth in Section 10.07 as if such Participant was a Lender hereunder. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section (b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender, acting for this purpose as an agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts and other Obligations from time to time (each a "Participation Register"). The entries in each Participation Register shall be conclusive absent manifest error and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under Section 3.01, Section 3.04 and Section 10.08"). The

Participation Register shall be available for inspection by the Lead Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Lead Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge, hypothecate or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge, hypothecate or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge, hypothecate or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the PPSA and the *Electronic Commerce Act, 2000* (Ontario).

(h) Transactions by Salus Entity. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, (A) neither Salus nor any Affiliate thereof (each, a "Salus Entity") shall be required to comply with this Section 10.06 in connection with any transaction involving any other Salus Entity or any of its or their lenders or funding or financing sources, and no Salus Entity shall have any obligation to disclose any such transaction to any Person, and (B) there shall be no limitation or restriction on (i) the ability of any Salus Entity to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation to any other Salus Entity or any lender or financing or funding source of a Salus Entity or (ii) any such lender's or funding or financing source's ability to assign or otherwise transfer its rights and/or obligations under this Agreement or any other Loan Document, any Commitment, any Loan, or any other Obligation; provided, however, that Salus shall continue to be liable as a "Lender" under this Agreement and the other Loan Documents unless such other Person complies with the provisions of this Agreement to become a "Lender".

10.07 Treatment of Certain Information; Confidentiality. Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, funding sources, lawyers, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the Insurance Bureau of Canada or the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or

thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (l) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (g) to their auditors in connection with any audit, (h) with the consent of the Lead Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to any Credit Party or any of their respective Affiliates on a non-confidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all Information received from the Loan Parties or any Subsidiary thereof relating to the Loan Parties or any Subsidiary thereof or their respective businesses, other than any such information that is available to any Credit Party on a non-confidential basis prior to disclosure by the Loan Parties or any Subsidiary thereof, provided that, in the case of information received from any Loan Party or any Subsidiary after the Closing Date, such Information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Credit Parties acknowledges that (a) the Information may include material non-public information concerning the Loan Parties or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing or if any Lender shall have been served with a trustee process or similar attachment relating to property of a Loan Party, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Agent or the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the Obligations now or hereafter existing under this Agreement or any other Loan Document to such Lender, regardless of the adequacy of the Collateral, and irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmaturing or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Lead Borrower and the Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof

and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf., or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

10.10 Survival. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Credit Parties, regardless of any investigation made by any Credit Party or on their behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Further, the provisions of Sections 3.01, 3.04 and 10.04 and Article IX shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agent may require such indemnities and collateral security as it shall reasonably deem necessary or appropriate to protect the Credit Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations that may thereafter arise under Section 10.04.

10.11 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.12 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid to the Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

- (d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.13 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS LOCATED IN THE PROVINCE OF ONTARIO IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE LOAN PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE LOAN PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE LOAN PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENCE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) ACTIONS COMMENCED BY LOAN PARTIES. EACH LOAN PARTY AGREES THAT ANY ACTION COMMENCED BY ANY LOAN PARTY ASSERTING ANY CLAIM OR COUNTERCLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT SOLELY IN A COURT LOCATED IN THE PROVINCE ON ONTARIO AS THE AGENT MAY ELECT IN ITS SOLE DISCRETION AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS WITH RESPECT TO ANY SUCH ACTION.

10.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favour of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty.

10.16 Anti-Money Laundering Legislation.

(a) Each Loan Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the USA Patriot Act (Title III of Pub. L. 1007-56 (signed into law October 26, 2001), and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, whether within Canada, the United States or elsewhere (collectively, including any guidelines or orders thereunder, "AML Legislation"), the Lenders and Agent may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. The Loan Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective assign or participant of a

Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If Agent has ascertained the identity of the Loan Parties or any authorized signatories of the Loan Parties for the purposes of applicable AML Legislation, then Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and Agent within the meaning of applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Loan Parties or any such authorized signatory in doing so.

10.17 USA PATRIOT Act Notice. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. The Loan Parties shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

10.18 Economic Sanction Laws. Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate any applicable foreign asset control or economic sanctions regulations, including the provisions of the *United Nations Act* (Canada), the *Special Economic Measures Act* (Canada), the *Criminal Code* (Canada) or any other economic sanctions laws administered by Foreign Affairs and International Trade Canada or the Department of Public Safety Canada (collectively, the "Economic Sanction Laws") or any enabling legislation or executive order relating thereto. Furthermore, none of the Borrowers or their Affiliates (a) is a Person designated by the Canadian government on any list set out in any Economic Sanction Law including the United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism or the *Criminal Code* (Canada) with which a Canadian Person cannot deal with or otherwise engage in business transactions (or is controlled by or acts, directly or indirectly, for or on behalf of any such Person) or (b) is a Person who is otherwise the target of Canadian economic sanctions laws such that a Canadian Person cannot deal or otherwise engage in business transactions with such Person.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Press Releases.

(a) Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent and without the prior written

consent of the Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent before issuing such press release or other public disclosure.

(b) Each Loan Party consents to the publication by the Agent or any Lender of advertising material, including any "tombstone" or comparable advertising, on its website or in other marketing materials of Agent, relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo, trademark or other insignia. The Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Lead Borrower for review and comment prior to the publication thereof. The Agent reserves the right to provide to industry trade organizations and loan syndication and pricing reporting services information necessary and customary for inclusion in league table measurements.

10.21 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement or any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Agent or any other Credit Party.

(b) The obligations of each Loan Party shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Obligations after the termination of the Commitments), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defence or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the indefeasible payment in full in cash of all the Obligations after the termination of the Commitments).

(c) To the fullest extent permitted by applicable Law, each Loan Party waives any defence based on or arising out of any defence of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. The Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or non-judicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been

indefeasibly paid in full in cash and the Commitments have been terminated. Each Loan Party waives any defence arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

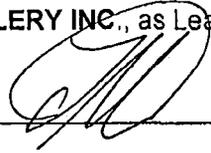
(d) Each Borrower is obligated to repay the Obligations as joint and several obligors under this Agreement. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations and the termination of the Commitments. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior indefeasible payment in full of the Obligations and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Borrower shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Borrower hereunder or other Obligations incurred directly and primarily by any other Borrower (an "Accommodation Payment"), then the Borrower making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Borrowers in an amount, for each of such other Borrowers, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Borrower's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Borrowers. As of any date of determination, the "Allocable Amount" of each Borrower shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Borrower hereunder without (a) rendering such Borrower not Solvent.

10.22 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

10.23 Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

J.S.N. JEWELLERY INC., as Lead Borrower

By:  _____

Name: JOSEPH SHILON

Title: PRESIDENT

J.S.N. JEWELLERY UK LIMITED, as Borrower.

By:  _____

Name: JOSEPH SHILON

Title: DIRECTOR

GMJ Corp., as Borrower

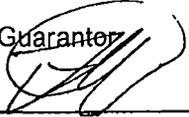
By:  _____

Name: JOSEPH SHILON

Title: PRESIDENT

Title: _____

2373138 Ontario Inc., as Guarantor

By:  _____

Name: JOSEPH SHILON

Title: PRESIDENT

Title: _____

6721657 Manitoba Inc., as Guarantor¹

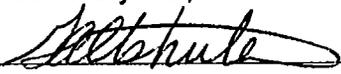
By:  _____

Name: JOSEPH SHILON

Title: PRESIDENT

Title: _____

Forever Jewellery Inc., as Guarantor

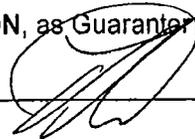
By:  _____

Name: GILA ALTSCHULER

Title: PRESIDENT

Title: _____

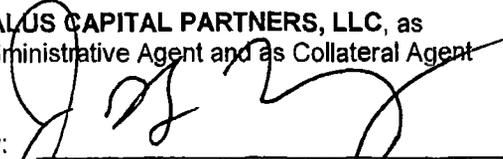
MR. JOSEPH SHILON, as Guarantor

By:  _____

Signature page to Credit Agreement

¹ [Ben Moss to sign Joinder as Borrower]

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

By: 
Name: Jonathan L. McCarty, SVP
Its Authorized Signatory

SALUS CAPITAL PARTNERS, LLC, as a
Lender

By:

Name: John P. L. Mealy, Sr.
Its Authorized Signatory

**SCHEDULE 1.01
BORROWERS**

J.S.N. JEWELLERY INC.

J.S.N. JEWELLERY UK LIMITED

GMJ CORPORATION

BEN MOSS JEWELLERS WESTERN CANADA LTD. (VIA JOINDER TO CREDIT AGREEMENT.
DATED AS OF JULY 18, 2013)

**SCHEDULE 1.02
GUARANTORS**

2373138 ONTARIO INC.

6721657 MANITOBA LTD.

FOREVER JEWELLERY INC. (LIMITED)

EXHIBIT "D"

Attached is Exhibit "D" Referred to in the
AFFIDAVIT OF ANDREW PRUNIER
Sworn before me this 23rd day of June, 2016

Christine Petersen

Notary Public



FIRST AMENDING AGREEMENT

THIS FIRST AMENDING AGREEMENT is made as of September 25, 2014 among J.S.N. Jewellery Inc., a corporation existing under the laws of the Province of Ontario (the "Lead Borrower"), the other Borrowers and Guarantors party hereto, each lender from time to time party hereto, and Salus Capital Partners, LLC, as Administrative Agent and Collateral Agent (the "Agent").

WHEREAS the Borrowers, the other Loan Parties, the Agent, and the Lenders are parties to a credit agreement dated as of July 18, 2013 (the "Credit Agreement");

AND WHEREAS the Lead Borrower has advised the Agent and the Lenders that it breached the terms of the Credit Agreement as a result of failing to comply with the financial covenants set forth in Sections 7.16(a) and 7.16(b) of the Credit Agreement for the month ended February, 2014 and each month thereafter up to the date hereof and, subject to year-end audit adjustments, may have also breached such financial covenants for the month of December, 2013 (collective, the "**Covenant Defaults**");

AND WHEREAS the Lead Borrower has failed to deliver, with the Agent's consent, the Borrower's Business Plan as required by Section 6.01(d) of the Credit Agreement and to deliver audited financial statements within 120 days of the fiscal year-end as required by Section 6.01(a) of the Credit Agreement (collectively, the "**Reporting Defaults**");

AND WHEREAS the Borrowers have requested that the Agent and the Lenders waive the Covenant Defaults and the Reporting Defaults and the Agent and the Lenders have agreed to such a waiver on the terms and conditions of this Agreement;

AND WHEREAS the Borrowers have requested that Salus CLO 2012-1, Ltd. (the "**New Lender**"), a new Lender under the Credit Agreement, extend a further term loan facility on the terms herein provided;

AND WHEREAS the parties hereto desire to amend the Credit Agreement as herein provided;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties hereto as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 Definitions. All capitalized terms used in this Agreement that are defined in the Credit Agreement have the meanings ascribed to them in the Credit Agreement, except to the extent that such terms are defined or modified in this Agreement, or the

context otherwise requires. In addition, the following terms have the following meanings:

“Credit Agreement” has the meaning specified therefor in the recitals hereto.

“this Agreement” means this First Amending Agreement, as it may be amended, supplemented, restated or otherwise modified from time to time.

1.2 Headings, etc. The division of this Agreement into Articles, Sections and other subdivisions, and the insertion of headings and captions are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

ARTICLE 2

AMENDMENTS TO CREDIT AGREEMENT

2.1 Effective as of the Effective Date (as defined below), the New Lender shall be deemed a “Lender” for all purposes under the Credit Agreement and the Credit Agreement is hereby amended as follows:

(i) The following sentences are hereby added to the definition of “Aggregate Revolving Commitment”:

With effect from the First Amendment Effective Date, the Aggregate Revolving Commitment shall be reduced by C\$1,500,000 (and each Revolving Lender’s share of the Revolving Commitment outstanding on such date shall be decreased by a pro rata amount to reflect such aggregate decrease) to \$48,500,000. Following payment by the Borrowers of the TLB Payment to the Agent on or before December 31, 2014, the Aggregate Revolving Commitment shall be increased by C\$1,500,000 (and each Revolving Lender’s share of the Revolving Commitment outstanding on such date shall be increased by a pro rata amount to reflect such aggregate increase) to C\$50,000,000 provided that on such date no Default or Event of Default then exists or would arise therefrom.

(ii) The definition of “Applicable Percentage” is hereby deleted in its entirety and replaced with the following:

“**Applicable Percentage**” means, in each case as the context requires, (a) with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time, (b) with respect to any Term Loan A Lender at any time, the portion of the Term Loan A represented by the outstanding principal balance of such Term Loan A Lender’s Term Loan A at such time, (c) with respect to any Term Loan B Lender at any time, the portion of the Term Loan B represented by the outstanding principal balance of such Term Loan B Lender’s Term Loan B at such time, (d) with respect to any Term Loan C Lender at any time, the portion of the Term Loan C represented by the outstanding principal balance of such Term Loan C Lender’s Term Loan C at

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

(iii) The definition of Availability Block is hereby deleted and replaced with the following:

“**Availability Block**” means C\$4,000,000. Following payment by the Borrowers of the TLB Payment to the Agent on or before December 31, 2014, the Availability Block shall be reduced to C\$2,000,000 provided that on such date no Default or Event of Default then exists or would arise therefrom.”

(iv) The definition of “Combined Leverage Ratio” in Section 1.01 of the Credit Agreement is hereby deleted.

(v) The definitions of “Borrowing”, “Term Borrowing”, “Term Commitments”, “Term Lenders” and “Term Loan B Margin Shortfall” are hereby deleted and replaced with the following:

“**Borrowing**” means a Revolving Credit Borrowing, the Term Loan A Borrowing, the Term Loan B Borrowing or the Term Loan C Borrowing, as the context may require.

“**Term Borrowing**” means, collectively, the Term Loan A Borrowings, the Term Loan B Borrowings and the Term Loan C Borrowings.

“**Term Commitments**” means, collectively, the Term Loan A Commitments, the Term Loan B Commitments and the Term Loan C Commitments.

“**Term Lenders**” means, collectively, the Term Loan A Lenders, the Term Loan B Lenders and the Term Loan C Lenders.

“**Term Loan B Margin Shortfall**” means at any time, the amount by which the aggregate principal amount of Term Loan A, Term Loan B and (with effect from the earlier of (i) the payment of the TLB Payment and (ii) December 31, 2014) Term Loan C exceeds the aggregate amount of the Borrowing Base – Term Loan B as then in effect.

(vi) The following definitions are hereby added to Section 1.01 of the Credit Agreement in the correct alphabetical order:

“Collateral Coverage Ratio” means, at any date of determination, the ratio of (a) the sum of (i) the Borrowing Base – Revolving Credit (ii) 95% of the Appraised Value of Permitted Consignment Inventory and (iii) the cash balance of any Blocked Account, each calculated on such date, to (b) the aggregate outstanding principal amount of the Committed Revolving Loans on such date.

“First Amendment Effective Date” means September 25, 2014.

“Permitted Consignment Inventory” means, at any date of determination and to the extent such amounts are not already included in the calculation of the Borrowing Base – Revolving Credit, Inventory on such date up to a maximum amount of U.S.\$2,500,000 (or the Equivalent Amount thereof) placed on consignment (where such consignment will automatically convert to a sale on a specific date that is no more than six (6) months after such date of determination) with Fred Meyer Jewelers, Aurum Holdings Limited (also known as Goldsmith), or such other customers as may be approved by the Agent.”

“Required Term Loan C Lenders” means, as of any date of determination, Lenders holding more than fifty percent (50%) of the then outstanding principal balance of the Term Loan C.”

“Term Loan C” means any term loan made by the Term Loan C Lenders pursuant to Section 2.01(b)(A).

“Term Loan C Applicable Margin” has the meaning given in the Pricing Letter.

“Term Loan C Borrowing” means the borrowing of the Term Loan C made by each of the Term C Lenders pursuant to Section 2.01(b)(A).

“Term Loan C Commitment” means, as to each Term Loan C Lender, its obligation to make a portion of the Term Loan C pursuant to Section 2.01(b)(A) in an aggregate principal amount not to exceed, (i) as of the Effective Date, in the case of CLO 2012-1, Ltd., U.S.\$3,500,000, or (ii) in the Assignment and Assumption pursuant to which such Term Loan C Lender becomes a party hereto, as applicable.

“Term Loan C Interest Rate” means a per annum rate equal to the U.S. Base Rate plus the Term Loan C Applicable Margin.

“Term Loan C Lender” means each Lender having a Term Loan C Commitment as set forth on Schedule 2.01 hereto or in the Assignment and Assumption by which such Person becomes a Term Loan C Lender, or after the making of the Term Loan C, each Lender holding any portion of the Term Loan C.

“**Term Loan C Note**” means a promissory note made by the Borrowers in favour of a Term Loan C Lender evidencing the Term Loan C made by such Term Loan C Lender, substantially in the form of Exhibit C-2.

“**TLB Payment**” means a repayment by the Borrowers, in Canadian Dollars, of a principal amount of the Term Loan B equal to the Canadian Dollar equivalent of U.S.\$3,500,000 (based upon the Spot Rate on the date of payment).

(vii) The following Section 2.01(b)(A) is hereby added into the Credit Agreement immediately following Section 2.01(b):

(b)(A) Subject to the terms and conditions set forth herein, each Term Loan C Lender severally agrees to make a loan to the Borrowers on the First Amendment Effective Date in a principal amount not to exceed the Term Loan C Commitment of such Term Loan C Lender. Amounts repaid in respect of the Term Loan C may not be reborrowed. Any portion of the Term Loan C Commitments which is not borrowed on the First Amendment Effective Date shall be cancelled. Notwithstanding anything to the contrary herein, the Term Loan C shall always be denominated in U.S. Dollars and shall not at any time be converted to another Type.

(viii) The last sentence of Section 2.05(h) is hereby deleted and replaced with the following:

Any prepayment made pursuant to Section (g) above shall be applied ratably to the outstanding Term Loan A, the outstanding Term Loan B or the outstanding Term Loan C, as determined by the Agent in its sole discretion.

(ix) The table in Section 2.07(b) of the Credit Agreement is hereby deleted and replaced with the following:

Date	Term Loan A Principal Amount	Term Loan B Principal Amount	Term Loan C Principal Amount
September 30, 2013	\$125,000	\$325,000	\$0.00
December 31, 2013	\$125,000	\$325,000	\$0.00
March 31, 2014	\$125,000	\$325,000	\$0.00
June 30, 2014	\$125,000	\$325,000	\$0.00
September 30, 2014	\$250,000	\$325,000	\$0.00
December 31, 2014	\$250,000	\$325,000 plus the TLB Payment	\$0.00
March 31, 2015	\$250,000	\$325,000	\$0.00

June 30, 2015	\$250,000	\$325,000	\$0.00
September 30, 2015	\$250,000	\$487,500	\$0.00
December 31, 2015	\$250,000	\$487,500	\$0.00
March 31, 2015	\$250,000	\$487,500	\$0.00
Termination Date	Balance of Term Loan A	Balance of Term Loan B	Balance of Term Loan C

(x) Section 2.08(a) is hereby deleted in its entirety and replaced with the following:

2.08(a) Subject to the provisions of Section 2.08(b) and (c) below, (i) each Committed Revolving Loan which is a U.S. Base Rate Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the U.S. Base Rate plus the Applicable Margin; (ii) each Committed Revolving Loan which is a Canadian Prime Rate Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin; (iii) each Term Loan A shall bear interest on the outstanding principal amount thereof at the Term Loan A Interest Rate then in effect, (iv) each Term Loan B shall bear interest on the outstanding principal amount thereof at the Term Loan B Interest Rate then in effect, and (v) each Term Loan C shall bear interest on the outstanding principal amount thereof at the Term Loan C Interest Rate then in effect.

(xi) Sections 7.16(a) and 7.16(b) of the Credit Agreement are hereby deleted in their entirety and replaced with the following new Section 7.16:

Collateral Coverage Ratio. As of the last Business Day of any calendar month, permit the Collateral Coverage Ratio to be less than (i) in the calendar months of February, March, April, May, June, July, August and September of any year, 1.00:1.00; and (ii) in the calendar months of October, November, December and January of any year, 1.15:1.00.

(xii) In Section 8.03 (*Application of Funds*), references to "Term Loan B" and "Term Loan B Lenders" shall be construed as references to "Term Loan B and Term Loan C" and "Term Loan B Lenders and Term Loan C Lenders", respectively.

(xiii) The table in Schedule 2.01 (*Commitments and Applicable Percentages*) of the Credit Agreement is hereby deleted and replaced with the following:

Lender	Name	Amount
Revolving Lender	Salus Capital Partners, LLC	C\$48,500,000 (subject to the definition of Aggregate Revolving Commitment)
Term Loan A Lender	Salus Capital Partners, LLC	C\$7,000,000
Term Loan B Lender	Salus Capital Partners, LLC	C\$13,000,000
Term Loan C Lender	Salus CLO 2012-1, Ltd.	U.S.\$3,500,000

ARTICLE 3
WAIVER

The Agent and the Lenders hereby consent to and waive the Covenant Defaults and the Reporting Defaults, with effect to the date of occurrence of such Covenant Defaults and Reporting Defaults, as applicable.

ARTICLE 4
MISCELLANEOUS PROVISIONS

4.1 **Conditions to Effectiveness.** This Agreement shall become effective on the date (the "Effective Date") upon which Agent shall have received each of the following in form and substance satisfactory to Agent:

- (a) this Agreement or counterparts hereof duly executed and delivered by Loan Parties, the Agent and each of the Lenders, all in accordance with Section 9.1 of the Credit Agreement;
- (b) a letter agreement duly executed and delivered by the Lead Borrower amending the Pricing Letter;
- (c) payment of all fees and out-of-pocket expenses payable pursuant to the Credit Agreement and the Pricing Letter (as amended on the date hereof), to the extent invoiced;
- (d) a Term Loan C Note;
- (e) a certificate signed by a Responsible Officer of the Loan Parties attaching resolutions or other actions, incumbency certificates and/or other certificates of each Loan Party evidencing the authority of each Loan Party to enter into this Agreement and identifying each Responsible Officer thereof authorized to execute and deliver this Agreement; and

- (f) a favourable opinion of Torkin Manes LLP addressed to the Agent and each Lender, as to such matters concerning the Loan Parties and this Agreement as the Agent may reasonably request.

4.2 Representations and Warranties. The Loan Parties represent and warrant to the Lenders and the Agent that, as of the Effective Date:

(a) This Agreement has been duly authorized, executed and delivered by each Loan Party, and the Credit Agreement and this Agreement constitute the legal, valid and binding obligations of each Loan Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditor's rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) The representations and warranties of each Loan Party set forth in the Credit Agreement and the Loan Documents are true and correct on and as of the Effective Date except such representations and warranties that are stated to be true as of a particular date; upon the effectiveness of this Agreement on the Effective Date, each Loan Party is in compliance with the covenants in the Credit Agreement; upon the effectiveness of this Agreement on the Effective Date, no Default or Event of Default (other than the Covenant Defaults and Reporting Defaults) has occurred and is continuing; and no material governmental or regulatory approval or consent is required in connection with this Agreement, except for any governmental or regulatory approval or consent which has been obtained, is in full force and effect and a copy of which has been provided to the Agent.

4.3 Ratification of Credit Agreement. The Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed. The Credit Agreement, as amended by this Agreement, shall be read, taken and construed as one and the same document.

4.4 Confirmation of Security. Each Loan Party acknowledges, confirms and agrees that (i) all Security Documents granted by such Loan Party to and in favour of the Agent on behalf of the Credit Parties as security for its obligations under the Credit Agreement and the other Loan Documents to which it is a party (collectively, the "Security") remain in full force and effect, unamended, and the security interests, mortgages, charges, hypothecations, liens, assignments, transfers and pledges granted by such Loan Party in favour of the Agent on behalf of the Credit Parties pursuant to the Security Documents continue to secure and extend to all debts, liabilities and obligations of such Loan Party to the Agent and the Credit Parties, whether direct or indirect, absolute or contingent, present or future, pursuant to, arising out of, or in connection with, the Credit Agreement (as amended hereby) and the other Loan Documents to which it is a party; and (ii) the Security Documents are hereby ratified and confirmed.

4.5 Reservation of Rights and Remedies. The waiver set forth in Section 3 is a limited waiver and, other than as expressly set forth herein, shall not constitute a waiver of any other Event of Default or Default now in existence or that may hereafter

occur, or any rights or remedies that the Agent or any Lender may have under the Credit Agreement, the other Loan Documents or applicable law with respect thereto, all of which rights and remedies are specifically reserved. Without limiting the foregoing, and other than as expressly set forth herein, the waiver granted by the Agent and the Lenders herein shall in no way (i) limit, impair, constitute a waiver of, or otherwise affect any right, power, or remedy of the Agent or any Lender under the Credit Agreement or any other Loan Document, or (ii) alter, modify, amend, or in any way affect any of the terms, conditions, obligations, covenants, or agreements contained in the Credit Agreement or any other Loan Document, all of which shall continue in full force and effect.

4.6 Waiver and Release. By its execution hereof, and in consideration of the mutual covenants contained herein and other accommodations granted to the Loan Parties hereunder, each Loan Party, on behalf of itself and its successors and assigns, hereby expressly forever waives, releases and discharges any and all claims (including, without limitation, cross-claims, counterclaims, and rights of setoff and recoupment), causes of action (whether direct or derivative in nature), demands, suits, costs, expenses and damages (collectively, the "Claims") any of them may have or allege to have as of the date of this Agreement (and all defenses that may arise out of any of the foregoing) of any nature, description, or kind whatsoever, based in whole or in part on facts, whether actual, contingent or otherwise, now known, unknown, or subsequently discovered, whether arising in law, at equity or otherwise, against the Agent or any Lender, their respective affiliates, agents, principals, managers, managing members, members, stockholders, "control persons" (within the meaning of Ontario securities laws), directors, officers, employees, legal counsel, consultants, advisors, agents, trusts, trustors, beneficiaries, heirs, executors and administrators of each of the foregoing (collectively, the "Released Parties") involving or otherwise relating to this Agreement or any of the other agreements entered into in connection herewith, the Credit Agreement, the Loan Documents or any or all of the actions and transactions contemplated hereby or thereby, including, without limitation, any actual or alleged performance or nonperformance by any of the Released Parties hereunder or thereunder. Each Loan Party hereby acknowledges that the agreements in this Section 4.7 are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Claims. In entering into this Agreement, each Loan Party expressly disclaims any reliance on any representations, acts, or omissions by any of the Released Parties and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above does not depend in any way on any such representation, acts and/or omissions or the accuracy, completeness, or validity thereof. The provisions of this paragraph shall survive the termination or expiration of the Loan Documents and the payment in full of all obligations of the Loan Parties under or in respect of the Credit Agreement and the other Loan Documents and all other amounts owing thereunder

4.7 Reference to and Effect on the Credit Agreement. On and after the Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein", "hereto", "hereby" and similar expressions, and each reference to "the Credit Agreement" and "the Agreement" in any Schedule to the Credit Agreement and, unless the context otherwise requires, any Loan Documents shall mean and refer to the

Credit Agreement, as amended by this Agreement. This Agreement is a "Loan Document" under the Credit Agreement.

4.8 Cost and Expenses. Each Loan Party agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, execution, delivery and administration of this Agreement, including the reasonable fees and out-of-pocket expenses of Blake, Cassels & Graydon LLP, counsel for the Agent with respect thereto.

4.9 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement. Delivery of an executed original counterpart of a signature page of this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Agreement.

4.10 Governing Law. This Agreement shall be governed by, and will be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written.

J.S.N. JEWELLERY INC., as Lead Borrower

By: _____
Name: _____
Title: _____

J.S.N. JEWELLERY UK LIMITED, as Borrower

By: _____
Name: _____
Title: _____

GMJ CORP., as Borrower

By: _____
Name: _____
Title: _____

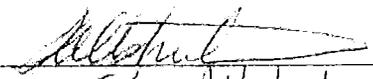
BEN MOSS JEWELLERS WESTERN CANADA LTD., as Borrower

By: _____
Name: _____
Title: _____

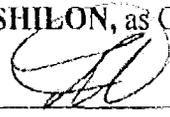
2373138 ONTARIO INC., as Guarantor

By: _____
Name: _____
Title: _____

**FOREVER JEWELLERY INC., as
Guarantor**

By: 
Name: Gila Altshuler
Title: _____

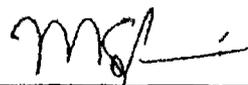
MR. JOSEPH SHILON, as Guarantor

By: 
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the day and year first above written

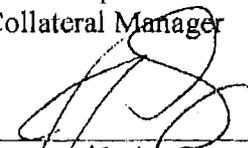
SALUS CAPITAL PARTNERS, LLC, as
Administrative Agent, Collateral Agent and
Lender

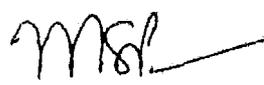
By: 
Name: Kyle Stonak
Title: EVP

By: 
Name: MARC S PRICE
Title: EXECUTIVE VICE PRESIDENT

SALUS CLO 2012-1, LTD.
as a Lender

By: Salus Capital Partners II, LLC,
Its: Collateral Manager

By: 
Name: Kyle Stonak, EVP
Its Authorized Signatory

By: 
Name: MARC S PRICE, EVP
Its Authorized Signatory

SALUS CAPITAL PARTNERS, LLC

and

FOREVER JEWELLERY INC.

(Short title of proceeding)

Court File No. CV-16-11439-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDINGS COMMENCED AT TORONTO**

APPLICATION RECORD
(Application returnable June 27, 2016)

(VOLUME I OF II)

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