

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

FACTUM OF THE APPLICANT
(application returnable October 7, 2011)

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PART I: OVERVIEW

1. The Applicant, Bank of Montreal (“**BMO**” or the “**Bank**”), brings this application for the appointment of PricewaterhouseCoopers Inc. (“**PwC**”) as the receiver (the “**Receiver**”) of the property, assets and undertaking of the Respondents, Bodkin Financial Corporation (“**Financial**”), Bodkin Capital Corporation (“**Capital**”) and Bodkin Leasing Corporation (“**Leasing**”, and together with Financial and Capital hereinafter referred to collectively as “**Bodkin**”) pursuant to section 243 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**”).

2. The appointment of a Receiver is just and convenient in the circumstances, as:

- (a) the appointment is supported by Bodkin’s primary secured creditors, the Bank and Sun Life (as defined below), and is not opposed by Bodkin;
- (b) Bodkin has repeatedly been in breach of its financial covenants to the Bank and has maintained margin deficits under Financial’s operating credit facility with the Bank for a 20-month period;
- (c) Bodkin has been in breach of its financial covenants to Sun Life under its securitization facility, which was placed in an event of termination position in February 2010 and expired in January 2011 without any further financing commitment from Sun Life;
- (d) the Bank demanded repayment of Financial’s obligations under the credit facilities and the guarantees granted by Capital and Leasing on October 3, 2011 following a lengthy forbearance period, and the Bank is not prepared to continue to finance the acquisition of additional new and used equipment and vehicles for lease to Bodkin’s customers;
- (e) the Bank has delivered notices of its intention to enforce its security on September 2, 2011, the 10-day period under section 244(2) of the BIA has since expired, and the Bank is entitled to appoint a Receiver by instrument in writing and/or seek the

Court-appointment of a Receiver upon a default under the applicable security documents;

- (f) the Bank is unaware of any sources of liquidity available to Bodkin to permit Bodkin to meet its working capital obligations as they come due and continue to operate in the ordinary course of business, and Bodkin's business will be adversely affected and the collectability of Bodkin's property will be negatively impacted if a Receiver is not appointed;
- (g) the appointment is necessary to complete a proposed sale transaction that, if finalized, will provide continued employment to the majority of Bodkin's current employees; and
- (h) the appointment will allow for a Court-officer to receive and distribute the proceeds of Bodkin's property, which should be sufficient to repay the Bank under the BMO credit facilities in full and may result in surplus proceeds being available for distribution to the subordinate creditors of Bodkin and potentially the shareholders of Bodkin;

3. Accordingly, the Bank is of the view that, having regard to all the circumstances, including the rights and interests of all parties in Bodkin's property and business, the appointment of a Receiver is just and convenient in the circumstances and respectfully requests that this Honourable Court grant its application.

PART II: FACTS

Background

4. Bodkin carries on business as a provider of vehicle and equipment financing to commercial customers nationally. Each of the Respondents has its head office in Mississauga, Ontario and employed thirty-two (32) full-time employees, one (1) part-time employee, and four (4) contract staff as of September 27, 2011.

**Affidavit of Paul James Findlay sworn October 3, 2011 (the "Findlay Affidavit"),
Application Record, Volume I, Tab 2, paras. 3, 6 and 7.**

Relationship with BMO

5. BMO has provided credit facilities to Financial since May 2004 for the purpose of financing Bodkin's operations. The credit facilities include an operating facility to finance daily business operations, a demand wholesale leasing credit facility to finance the acquisition and leasing of new and used vehicles, a demand credit facility to finance the acquisition and leasing of new and used heavy duty trucks and trailers, and a demand credit facility to finance the acquisition and leasing of specific types of new equipment.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 8-9.

6. As of September 30, 2011, an aggregate principal amount of \$10,354,803.27 was outstanding under the BMO credit facilities, exclusive of all applicable costs, fees and interest, and each of the credit facilities, other than the operating credit facility, was fully drawn. The indebtedness owed by Financial to the Bank under the BMO credit facilities is payable to the Bank on demand, which demand the Bank is entitled to make at any time in its sole discretion.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 10, 12 and 13.

7. BMO obtained guarantees from Capital and Leasing in May 2004 that guarantee payment of all present and future debts and liabilities owed to the Bank by Financial, up to a maximum amount of \$35 million.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 11.

8. Each of Financial, Capital and Leasing have, amongst other things, respectively granted to the Bank, as security for their respective obligations under the BMO credit facilities and the guarantees:

- (a) a security interest in all of their present and future inventory, equipment, intangibles, chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom;

- (b) a floating charge in all of their present and future undertaking and all of their present and future property and assets, real and personal, movable or immovable, of whatsoever nature and kind, subject to the exceptions set forth therein; and
- (c) a security interest in all vehicles purchased with funds provided by the Bank, all leases with respect to such vehicles and all rights, benefits and proceeds arising out of such vehicles or leases.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 16.

9. Each of Financial, Capital and Leasing has respectively agreed that, upon a default under the applicable security document, the Bank is entitled to appoint a Receiver by instrument in writing and/or seek the Court-appointment of a Receiver.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 18.

10. The Bank has registered its security interests in the property of each of Financial, Capital and Leasing with the registries maintained under the *Personal Property Security Act* in every province and territory in Canada (other than the Province of Quebec), and has registered its hypothecs over the property of each of Financial, Capital and Leasing in the Registrar of Personal and Movable Real Rights maintained in Quebec.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 18-19.

Relationship with Sun Life

11. In addition to the BMO credit facilities, Capital and Leasing have entered into a securitization arrangement with Sun Life under which Capital and Leasing make bulk assignments of equipment and vehicle leases to Sun Life, from time to time, with the price of the assignments being the net book value of the assigned leases, less a discount calculated at a rate provided therein.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 21- 22.

12. The net present value of the lease receivables assigned to Sun Life was approximately

\$143,123,767 as of August 31, 2011, and the Sun Life securitization facility constituted approximately 7,000 equipment and vehicle leases as of that date.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 25.

13. Under the terms of the securitization facility, Capital and Leasing are required, at the time when an assignment of leases to Sun Life is completed, to contribute a set percentage of the assignment price of the leases into a reserve fund (the “**Reserve Fund**”). The purpose of the Reserve Fund is to act as collateral for any delinquencies or credit losses in the leases assigned to Sun Life, and to fund costs associated with the administration of the assigned leases by Bodkin.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 29 and 31.

14. The balance in the Reserve Fund as of August 31, 2011 was approximately \$13,606,980.14. Bodkin’s interest in the Reserve Fund is its sole asset of any material value at this time.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 32.

Financial Difficulties

Breaches and Defaults

15. Bodkin has been in default under the BMO credit facilities as a result of being in breach of its:

- (a) Leverage Ratio covenant as at the fiscal year ended August 31, 2009, fiscal periods ended February 28, 2010, March 30, 2010, April 2010 and fiscal year ended August 31, 2010;
- (b) Interest Coverage Ratio as at the fiscal year ended August 31, 2009, fiscal year ended August 31, 2010, and fiscal periods ended December 31, 2010, January 31, 2011, February 28, 2011, May 31, 2011, June 30, 2011 and July 31, 2011; and
- (c) Securitization Ratio as of the fiscal periods ended August 31, 2010 through to and including July 31, 2011.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 42.

16. Bodkin has also been in breach of its financial covenants to Sun Life under the securitization facility, which has been under an event of termination since February 2010 due to Bodkin's breach of certain "lockup triggers", the existence of which permits Sun Life, in its sole discretion, to halt additional funding to Bodkin and potentially terminate the securitization facility.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 43-45.

17. The Sun Life securitization facility expired on January 31, 2011. Sun Life has not renewed its securitization facility with Bodkin and since that date has purchased equipment and vehicle leases on an *ad hoc* basis.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 28.

Margin Deficits and Forbearance

18. Since April 2010, Bodkin has required margin deficits under its BMO operating credit facility to continue to operate in the ordinary course. The Bank provided additional credit to Bodkin from March 2010 to October 3, 2011 in order to permit Bodkin to continue on in business and facilitate a sale of its business, notwithstanding that Bodkin has been in default of its obligations to the Bank.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 47-50.

19. The Bank and Bodkin entered into forbearance agreements in June 2010, August 2010 and September 2010, such that the Bank agreed to forbear from enforcing its security and demanding repayment to permit Bodkin to attempt to procure an offer for the sale of Bodkin's business. The Bank has been in a *de facto* day-to-day forbearance with respect to Bodkin, pending further developments in connection with the potential sale of Bodkin's business since January 2011.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 54-57.

Proposed Sale of Bodkin Business

20. Bodkin commenced an informal solicitation process in May 2009 in an attempt to locate a party that was prepared to re-finance Bodkin's indebtedness, provide an equity investment and/or purchase the Bodkin leasing business on a going concern basis. As of September 2010, Bodkin had not completed a transaction.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 58-59.

21. Bodkin, with the assistance of Deloitte & Touche LLP and PricewaterhouseCoopers Corporate Finance Inc., conducted a formal solicitation process for a potential sale of assets or recapitalization of Bodkin. The solicitation process identified 59 potential buyers, two (2) of which were strategic buyers that submitted letters of intent for the purchase of the portfolio of leases securitized with Sun Life, the leases funded under the Bank's term credit facilities and the leases owned by Bodkin. The terms of each of the proposed transactions were not acceptable to Bodkin and its stakeholders, due to the potential shortfall to be faced by Bodkin and its stakeholders thereunder.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 60, 61, 64-69.

22. As a result of negotiations that commenced in December 2010, a sale transaction has been finalized with the affiliates of Equirex Leasing Corp. ("**Equirex**"). PwC, in its capacity as proposed Receiver of Bodkin, has reported its view that the Equirex transaction is reasonable in the circumstances, as it preserves the core business of Bodkin, facilitates the continued employment of a number of Bodkin employees, and provides for the greatest possible realization for the benefit of all of Bodkin stakeholders.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 71-72.

23. The Bank is supportive of the consummation of the sale of Bodkin's business to Equirex, as the transaction should, if the lease portfolios are wound down in a commercially reasonable manner, provide for sufficient proceeds to repay the Bank under the BMO credit facilities in full and have surplus proceeds available for distribution to the subordinate creditors of Bodkin, and potentially the shareholders of Bodkin. Sun Life has also consented to the sale of Bodkin's

business to the affiliates of Equirex.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 73 and 79.

24. In the absence of the completion of the Equirex transaction, there will be a disruption in the Bodkin business which would adversely affect the marketability and value of Bodkin's business, jeopardize the collectability of the receivables under the assigned lease portfolios and negatively impact the ability of Bodkin's stakeholders to be repaid in full from funds available to be distributed to the stakeholders of Bodkin from the Reserve Fund.

Findlay Affidavit, Application Record, Volume I, Tab 2, paras. 81-82.

25. The Bank delivered notices of the Bank's intention to enforce its security to each of the Respondents pursuant to section 244 of the BIA on September 2, 2011. On October 3, 2011, the Bank demanded repayment from Financial of its obligations under the BMO credit facilities, and demanded repayment from each of Capital and Leasing under the guarantees granted to the Bank.

Findlay Affidavit, Application Record, Volume I, Tab 2, para. 74.

PART III: ISSUES

26. The issue on this application is whether it is just and convenient for this Honourable Court to appoint a Receiver over all of the property, assets and undertaking of Bodkin pursuant to section 243(1) of the BIA and section 101 of the CJA.

PART IV: LAW & ARGUMENT

A. The Test for Appointment of a Receiver

27. Pursuant to section 243(1) of the BIA, the Court may, on application by a secured creditor, appoint a receiver where it considers it to be just or convenient to do so. Section 243(1) provides:

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 243(1) [BIA].

28. A "secured creditor" is defined in section 2(1) of the BIA to mean, among other things, a "person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor".

BIA, s. 2(1)

29. Subsection 243(1.1) of the BIA provides that the Court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends a notice of its intention to enforce security required under section 244(1) unless the insolvent person consents to an earlier enforcement under subsection 244(2) or the court considers it appropriate to appoint a receiver before then.

BIA, ss. 243(1.1) and 244.

30. The test for the appointment of a receiver under 101 of the CJA is also whether such appointment would be just or convenient:

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Courts of Justice Act, R.S.O. 1990, c. C.43, s.101(1) [CJA].

31. In deciding whether to appoint a receiver, the Court must have regard to all the circumstances, but in particular to the nature of the property and the rights and interests of all parties in relation thereto.

Bank of Montreal v. Carnival National Leasing Ltd. (2011), 74 C.B.R. (5th) 300 (Ont. S.C.J. [Commercial List]), para. 24 [*Carnival*]

Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]), para. 11 [*Freure Village*]

32. The fact that the moving party has a right under its security documentation to appoint a receiver is an important factor to be considered. In cases where the security documentation of the moving party provides for a private or Court-appointed receiver, the issue is reduced to a consideration of whether it is in the interests of all concerned to have the receiver appointed by the Court. This involves an examination of, *inter alia*, (i) the potential cost of the receivership, (ii) the relationship between the debtor and the creditors, (iii) the likelihood of maximizing the return on and preserving the subject property, and (iv) the best way of facilitating the work and duties of the receiver.

Carnival, para. 27

Freure Village, para 13

B. It is Just and Convenient to Appoint a Receiver in this Case

33. The appointment of a Receiver is just and convenient in this case. The Bank is a secured creditor of Bodkin as a result of the security granted in support of the BMO credit facilities and guarantees, and thus is entitled under sections 243(1) of the BIA and section 101 of the CJA to seek the appointment of a Receiver. Additionally, the security documents specifically give the Bank the right to request the appointment of a Court-appointed Receiver. As a result, BMO is entitled, both contractually and at law, to seek the appointment of a Receiver.

34. Financial is in default under the Bank's credit facilities and is in default under the Sun Life securitization facility. Bodkin has been in a liquidity crisis since March 2010 and required the existence of margin deficits for a 20-month period of time to continue to operate in the ordinary course

35. The Bank is unaware of any sources of liquidity available to Bodkin to permit Bodkin to meet its working capital obligations as they come due and continue to operate in the ordinary course of business. The Sun Life securitization facility expired on January 31, 2011 and Sun Life has made no commitment to continue with the securitization facility in the future.

36. The Bank is unwilling to continue to finance the acquisition of additional new and used equipment and vehicles for lease to Bodkin's customers. Accordingly, in the absence of funding by Sun Life and the Bank, Bodkin is unable to continue to carry on its business.

37. The Bank refrained from demanding repayment of the BMO credit facilities and permitted the continued existence of the margin deficit to allow for the negotiation of a sale of Bodkin's business. The proposed sale transaction with Equirex has the consent of Bodkin's two primary secured stakeholders, the Bank and Sun Life, and is in the best interest of all of Bodkin's stakeholders, as, if completed, it will provide continued employment to the majority of Bodkin's current employees, and will allow for the administration and management of the net proceeds of the Reserve Fund by an officer of the Court.

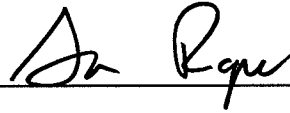
38. It is the Bank's view that, in the absence of the completion of the Equirex transaction, there would be a disruption in the Bodkin business which would adversely affect the marketability and value of Bodkin's business, jeopardize the collectability of the receivables under the assigned lease portfolios and negatively impact the ability of Bodkin's stakeholders to be repaid in full from funds available to be distributed to the stakeholders of Bodkin from the Reserve Fund.

39. In all of the circumstances, taking into consideration the rights and interests of all of Bodkin's stakeholders, it is just and convenient for a receiver to be appointed over the assets, undertakings and property of Bodkin.

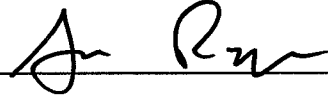
PART V. RELIEF SOUGHT

40. The Bank respectfully requests that this Honourable Court appoint the Receiver as requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF OCTOBER, 2011.

A handwritten signature in black ink, appearing to read "Sam Rappos", written above a horizontal line.

Sam P. Rappos, of counsel to Bank of Montreal

A handwritten signature in black ink, appearing to read "H. Alexander Zimmerman", written above a horizontal line.

Per H. Alexander Zimmerman, of counsel to Bank of Montreal

SCHEDULE “A” – LIST OF AUTHORITIES

1. *Bank of Montreal v. Carnival National Leasing Ltd.* (2011), 74 C.B.R. (5th) 300 (Ont. S.C.J. [Commercial List])
2. *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List])

SCHEDULE "B" – STATUTES

Bankruptcy and Insolvency Act

R.S.C. 1985, c. B-3

2. "secured creditor" means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the Civil Code of Québec or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
 - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
 - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
 - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the Civil Code of Québec entitled Prior Claims and Hypothecs that deal with the exercise of hypothecary rights;

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the

expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2);
or
- (b) the court considers it appropriate to appoint a receiver before then.

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

Courts of Justice Act

R.S.O. 1990, c. C.43

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

(2) An order under subsection (1) may include such terms as are considered just.

BANK OF MONTREAL

- and -

BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

FACTUM OF THE APPLICANT

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(application returnable October 7, 2011)

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INDEX

1. *Bank of Montreal v. Carnival National Leasing Ltd.* (2011), 74 C.B.R. (5th) 300 (Ont. S.C.J. [Commercial List])
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TAB 1

2011 CarswellOnt 896, 2011 ONSC 1007, 74 C.B.R. (5th) 300

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2011 CarswellOnt 896, 2011 ONSC 1007, 74 C.B.R. (5th) 300

Bank of Montreal v. Carnival National Leasing Ltd.

Bank of Montreal (Applicant) and Carnival National Leasing Limited and Carnival Automobiles Limited (Respondents)

Ontario Superior Court of Justice

Newbould J.

Heard: February 11, 2011

Judgment: February 15, 2011

Docket: CV-10-9029-00CL

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Counsel: John J. Chapman, Arthi Sambasivan for Applicants

Fred Tayar, Colby Linthwaite for Respondents

Rachelle F. Mancur for Royal Bank of Canada

Subject: Corporate and Commercial; Insolvency

Debtors and creditors --- Receivers — Appointment — Application for appointment — Grounds

Debtor was in business of leasing motor vehicles — Debtor was indebted to creditor bank; vehicles guaranteed indebtedness to \$1.5 million — Creditor held security over assets of debtor including general security agreement under which it had right to appoint receiver of debtor or to apply to court for appointment of receiver — Under terms of wholesale leasing facility, total advances for used vehicle financing were not to exceed 30 percent of approved lease portfolio credit line — Creditor's account manager was informed that used car lease portfolio was 60 percent of leases financed by creditor, well in excess of 30 percent condition of loan — Creditor delivered demands for payment — Creditor applied for appointment of receiver — Application granted — Debtor relied on decision in which judge was critical of actions of bank in overstating its case and making unsupportable allegations of fraud — In case at bar there was no basis to refuse order sought because of alleged misconduct on part of creditor or its counsel — If anything, shoe was on other foot as factum filed on behalf of debtor was replete with allegations of false assertions on behalf of creditor, none of which were established

— Cited case was relied upon in which it was held that where security instrument permits appointment of private receiver, extraordinary nature of remedy sought is less essential to inquiry — It was preferable to have court appointed receiver rather than privately appointed one as debtor stated that if private appointment was made it would litigate its right to do so.

Cases considered by Newbould J.:

Anderson v. Hunking (2010), 2010 CarswellOnt 5191, 2010 ONSC 4008 (Ont. S.C.J.) — referred to

Bank of Nova Scotia v. D.G. Jewelry Inc. (2002), 2002 CarswellOnt 3443, 38 C.B.R. (4th) 7 (Ont. S.C.J.) — considered

Bank of Nova Scotia v. Freure Village on Clair Creek (1996), 1996 CarswellOnt 2328, 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) — followed

Kavcar Investments Ltd. v. Aetna Financial Services Ltd. (1989), 70 O.R. (2d) 225, 77 C.B.R. (N.S.) 1, 35 O.A.C. 305, 62 D.L.R. (4th) 277, 1989 CarswellOnt 191 (Ont. C.A.) — referred to

Royal Bank v. Boussoulas (2010), 2010 ONSC 4650, 2010 CarswellOnt 6332 (Ont. S.C.J.) — considered

Royal Bank v. Chongsim Investments Ltd. (1997), 1997 CarswellOnt 988, 28 O.T.C. 102, 32 O.R. (3d) 565, 46 C.B.R. (3d) 267 (Ont. Gen. Div.) — distinguished

Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (1987), 1987 CarswellOnt 383, 16 C.P.C. (2d) 130 (Ont. H.C.) — considered

Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]) — considered

Toronto Dominion Bank v. Pritchard (1997), 154 D.L.R. (4th) 141, 104 O.A.C. 373, 1997 CarswellOnt 4277 (Ont. Div. Ct.) — considered

1468121 Ontario Ltd. v. 663789 Ontario Ltd. (2008), 2008 CarswellOnt 7601 (Ont. S.C.J.) — not followed

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

s. 243 — referred to

s. 243(1) — considered

Courts of Justice Act, R.S.O. 1990, c. C.43

s. 101 — considered

APPLICATION by creditor for appointment of private receiver of debtor.

Newbould J.:

1 Bank of Montreal ("BMO") applies for the appointment of PriceWaterhouse Coopers Inc. as national receiver of the respondents Carnival National Leasing Limited ("Carnival") and Carnival Automobiles Limited ("Automobiles") under sections 243 (1) of the *Bankruptcy and Insolvency Act* and 101 of the *Courts of Justice Act*.

2 Carnival is in the business of leasing new and used passenger cars, trucks, vans and equipment vehicles. It has approximately 1300 vehicles in its fleet. Carnival is indebted to BMO for approximately \$17 million pursuant to demand loan facilities. Automobiles guaranteed the indebtedness of Carnival to BMO limited to \$1.5 million. David Hirsh is the president and sole director of Carnival and has guaranteed its indebtedness to BMO limited to \$700,000. BMO holds security over the assets of Carnival and Automobiles, including a general security agreement under which it has the right to appoint a receiver of the debtors or to apply to court for the appointment of a receiver. On November 30, 2010 BMO delivered demands for payment to Carnival, Automobiles and Mr. Hirsh.

3 The respondents contend that no receiver should be appointed. In my view BMO is entitled to appoint PWC as a receiver of the respondents and it is so ordered for the reasons that follow.

Events leading to demand for payment

4 The respondents quarrel with the actions of BMO leading to the demands for payment and assert that as a result a receiver should not be appointed.

5 BMO has been Carnival's banker for 21 years. Loans were made annually on terms contained in a term sheet. Each year BMO did an annual review of the account, after which a new term sheet for the following year was signed. The last term sheet was signed on January 29, 2010 and was for the 2010 calendar year. The last annual review, completed on October 27, 2010, recommended a renewal of the credits with various changes being proposed, including a risk rating upgrade from 45 to 40 and a reduction in the demand wholesale leasing facility from \$21.9 million to \$20 million. That review, however, was not sent to senior management for approval and no agreement was made extending the credit facilities to Carnival for the 2011 calendar year.

6 The 2010 term sheet provided for two major lines of credit. The larger facility was a demand wholesale leasing facility with a limit of \$21.9 million, under which Carnival submitted vehicle leases to BMO. If a lease was approved BMO advanced up to 100% of the cost of the vehicle and in return received security over the vehicle. The second facility was a general overdraft facility described as a demand operating loan with a limit of \$1.15 million. The term sheet provided that all lines of credit were made on a demand loan basis and that BMO reserved the right to cancel the lines of credit "at any time at its sole discretion".

7 Under the terms of the wholesale leasing facility, total advances for used vehicle finan-

cing were not to exceed 30% of the approved lease portfolio credit line. That apparently had been a term of the facility for many years. The annual review of October 27, 2010 stated that for the past year, the concentration of used leases was 27.8%. In the previous annual review in 2009, the figure for used lease concentration was 11.6%. Mr. Findlay of the BMO special accounts management unit (SAMU) said on cross-examination that while he could not say as a fact where those percentages came from, the routine for annual reviews was for the person preparing the annual review to obtain such figures from the support staff of the bank's automotive centre.

8 Shortly after the 2010 annual review had been completed, and before it was sent to higher levels of the bank for approval, Mr. Lavery, the account manager at BMO for Carnival, received information from someone at BMO, the identity of whom I do not believe is in the record, informing him that the used car lease portfolio was approximately 60% of the leases financed by BMO, well in excess of the 30% condition of the loan. That led Mr. Lavery to call Mr. Findlay of SAMU. On November 17, 2010 BMO engaged PWC to review the operations of Carnival. On November 26, 2010 BMO's solicitors delivered to Carnival a letter which stated, amongst other things, that BMO would not finance any future leases until PWC's review engagement was completed, that BMO would no longer allow any overdraft on Carnival's operating line and that the bank reserved its right to demand payment of any indebtedness at any time in the future.

9 On November 29, 2010 PWC provided its initial report to BMO. It contained a number of matters of concern to BMO, including itemizing a number of breaches of the lending agreements that Carnival had with BMO. On November 30, 2010 BMO's solicitors delivered to Carnival a letter itemizing a number of breaches of the loan agreements, one of which was that advances for used vehicle financing were in excess of 30% of the approved lease portfolio credit line. Demand for payment under the lines of credit totalling \$17,736,838.45 was made. Following the demand, PWC continued its engagement and discovered a number of irregularities in the Carnival business, some of which are contained in the affidavit of Mr. Findlay.

10 It turns out that the 30% limit for used vehicle leases had not been met for some time. Carnival provided to BMO's automotive centre copies of the individual leases and bills of sale which showed the model year of the car to to be financed and this information was in the BMO automotive centre computer records. Reports on BMO's website as at December 31, 2008 demonstrated 45% of Carnival's BMO financed leases were for used vehicles. At December 31, 2009 it was 73% and as at October 31, 2001 it was 60%. The evidence of Mr. Findlay on cross-examination was that while that information was on the computer system, it was not known by the account management responsible for the Carnival credits. He acknowledged that if the account management went to the computer system they would have seen that information but if they did not they would not have known of it. There is no evidence that Mr. Lavery or others in the account management of BMO responsible for the Carnival credit were aware before late October, 2010 of the true percentage of the used car lease portfolio.

11 Mr. Hirsh said on cross-examination that he assumed somebody in control at the bank knew the percentage of used vehicle leases. Although the loan terms he signed each year contained the 30% condition, he never suggested that the percentage should be changed to a high-

er figure. One can argue that Mr. Hirsh should have told his account manager at BMO that the condition he was agreeing to was not being met. Of course if he had done so he could well have faced a likely loss of credit needed to run his business. The loan terms included a requirement that Carnival provide an annual detailed analysis of the entire lease portfolio, including a breakdown of the lease concentrations. Had those been provided, it would appear that the percentage of used vehicle leases would have been reported by Carnival. While the record does not indicate whether such reports were provided, I think it can be assumed that if they had been, Mr. Hirsh would have provided that information in his affidavit.

12 Since November 26, 2010, BMO has not financed any further vehicles under the demand wholesale line of credit. Pending the application to appoint a receiver, BMO has continued to extend the \$1.15 million operating facility, in spite of its demand. Under the terms of the demand wholesale line of credit, Carnival is obliged after selling vehicles financed by BMO to pay down the wholesale leasing line within 30 days by transferring the money received from its operating line account to the wholesale leasing line. It has not always done so and PWC estimates the amount involved to be \$814,000. The operating facility is now in overdraft as a result of the demand for payment.

Issues

(a) Right to enforce payment

13 On a demand loan, a debtor must be allowed a reasonable time to raise the necessary funds to satisfy the demand. Reasonable time will generally be of a short duration, not more than a few days and not encompassing anything approaching 30 days. See *Kavcar Investments Ltd. v. Aetna Financial Services Ltd.* (1989), 70 O.R. (2d) 225 (Ont. C.A.) per McKinley J.A. See also *Toronto Dominion Bank v. Pritchard*, [1997] O.J. No. 4622 (Ont. Div. Ct.) per Farley J.:

5. It is clear therefore that the reasonable time to repay after demand is a very finite time measured in days, not weeks, and it is not "open ended" beyond this by the difficulties that a borrower may have in seeking replacement financing, be it bridge or permanent.

14 Under the loan agreements, the credits were on demand and as well BMO had the right to cancel the credits at any time at its sole discretion. It is now over 70 days since demand for payment was made.

15 I do not see the issue of BMO management not being aware of the percentage of used car leases as affecting BMO's rights under its loan agreements, even assuming it was all BMO's fault, which I am not at all sure is the case. There is no evidence that BMO in any way intentionally waived its 30% loan condition, nor is it the case that it was only a breach of the 30% condition that led to the demand for payment being delivered to Carnival. There were a number of other concerns that BMO had. In any event, there was no requirement before demand or termination of the credits that BMO had to have justification to demand payment. To the contrary, the agreement provided that BMO had the right to terminate the credits at any time at its sole discretion.

16 In argument, Mr. Tayar said that Carnival needs just a little more time to obtain financing to pay out the BMO loans. From a legal point of view Carnival has been provided more time than is required. From a practical point of view, it is very unlikely that Carnival will be able in any reasonably foreseeable period of time to pay out BMO.

17 The car leasing business for businesses such as Carnival has been very difficult for a number of years, as acknowledged by Mr. Hirsh. Competitors such as Ford, GM and Chrysler began offering very low interest rates for new vehicles that Carnival could not provide. The economy led to more customers missing payments. There were lower sales generally. Carnival's leased assets fell from \$49 million in 2006 to \$35 million in 2009. Carnival had a profit of \$1.2 million in 2006 but in the years 2007 through 2009 had a cumulative net loss of \$244,000. While its business was shrinking, Carnival's accounts receivable grew significantly, from \$1.5 million in 2006 to \$2.8 million in 2009, indicating, as Mr. Hirsh acknowledged on cross-examination, that customers owed more than in the past for lease payments because of difficult economic times.

18 Carnival also borrowed from RBC to finance its lease portfolio. Some leases were financed with BMO and some with RBC. In the mid-2000s, the size of Carnival's loan facility with BMO and RBC was about even. In 2008 RBC stopped lending to Carnival on new leases and since then Carnival has been paying down its RBC loans. Today Carnival owes RBC approximately \$5.6 million. Thus Carnival owes the two banks approximately \$22.6 million.

19 In an affidavit sworn February 8, 2011, Mr. Hirsh disclosed that he has had discussions with TD Bank and has an indication of a loan of approximately \$11.5 million. A deal sheet has yet to be provided to TD's credit department for approval, but is expected to be considered by the end of February. If approved, it is contemplated that funds could be advanced sometime in April. Mr. Hirsh states that the TD guidelines allow TD to advance (i) on new vehicles \$6.5 million on leases currently financed by BMO and \$1.9 million on leases currently financed by RBC and (ii) on used vehicles, \$2 million on leases currently financed by BMO and \$392,000 on leases currently financed by RBC. A further \$2 million would be available on non-bank financed leases. Thus if a TD loan were granted, at most the amount that would be available to pay down BMO would be \$10.5 million and it might be less if, as is likely, there are not \$6.5 million worth of new car leases currently being financed by BMO.

20 Mr. Hirsh further states in his affidavit that he believes he will be able to pay off the balance of BMO loans through a combination of TD financing new Carnival leases and the payout of existing leases and/or sales of Carnival vehicles. No time estimate is given for this and one can only conclude that it would not be soon.

21 In these circumstances, assuming that it is permissible to consider the chances of refinancing in considering what a reasonable time would be to permit enforcement of security after a demand for payment, I do not consider the chances of refinancing in this case to prevent BMO from acting on its security.

22 BMO had the right under its loan agreements to stop financing new vehicle leases and to demand payment of the outstanding loans. No new term sheet was signed for 2011. Since

the demand for payment, it has provided far more time than required in order to enforce its security. In my view, BMO is entitled to payment of the outstanding loans and to enforce its security including, if it wished to do so, to privately appoint a receiver of the assets of Carnival and Automobile or serve notices to the large number of lessees of the assignment of the leases and require payment directly to BMO.

(b) Court appointed receiver

23 Under section 243 of the *BIA* and section 101 of the *Courts of Justice Act*, a court may appoint a receiver if it is "just and convenient" to do so.

24 In *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]), Blair J. (as he then was) dealt with a similar situation in which the bank held security that permitted the appointment of a private receiver or an application to court to have a court appointed receiver. He summarized the legal principles involved as follows:

10 The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the Courts of Justice Act, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally *Third Generation Realty Ltd. v. Twigg* (1991) 6 C.P.C. (3d) 366 at pages 372-374; *Confederation Trust Co. v. Dentbram Developments Ltd.* (1992), 9 C.P.C. (3d) 399; *Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd.* (1984), 54 C.B.R. (N.S.) 18 at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49.

25 It is argued on behalf of Carnival that the appointment of a receiver is an extraordinary remedy to be granted sparingly and that as it amounts to execution before judgment, there must be strong evidence that the plaintiff's right to judgment must be exercised sparingly. The cases that support this proposition, however, are not applicable as they do not deal with a secured creditor with the right to enforce its security.

26 *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd.* (1987), 16 C.P.C. (2d) 130 (Ont. H.C.) is relied on by Carnival as supporting its position. That case however dealt with a disputed claim to payments said to be owing and a claim for damages. The plaintiff had no security that permitted the appointment of a receiver and requested a court appointed receiver until trial. Salhany L.J.S.C. likened the situation to a plaintiff seeking execution before judgment and considered that the test to support the appointment of a receiver was no less stringent than the test to support a Mareva injunction. With respect, that is not the law of Ontario so far as enforcing security is concerned. The same situation pertained in *Anderson v. Hunking*, 2010 ONSC 4008 (Ont. S.C.J.) cited by Mr. Tayar. I have serious doubts whether 1468121

Ontario Ltd. v. 663789 Ontario Ltd., 2008 CarswellOnt 7601 (Ont. S.C.J.) cited by Mr. Tayar was correctly decided and would not follow it.

27 In *Bank of Nova Scotia v. Freure Village on Clair Creek*, Blair J. dealt with an argument similar to the one advanced by Carnival and stated that the extraordinary nature of the remedy sought was less essential where the security provided for a private or court appointed receiver and the issue was essentially whether it was preferable to have a court appointed receiver rather than a private appointment. He stated:

11. The Defendants and the opposing creditor argue that the Bank can perfectly effectively exercise its private remedies and that the Court should not intervene by giving the extraordinary remedy of appointing a receiver when it has not yet done so and there is no evidence its interest will not be well protected if it did. They also argue that a Court appointed receiver will be more costly than a privately appointed one, eroding their interests in the property.

12. While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver - and even contemplates, as this one does, the secured creditor seeking a court appointed receiver - and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather, the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This, of course, involves an examination of all the circumstances which I have outlined earlier in this endorsement, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the receiver-manager

28 In *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]), in which the bank held security that permitted the appointment of a private or court ordered receiver, Ground J. made similar observations:

28. The first submission of counsel for Odyssey and Weston is that there is no risk of irreparable harm to Swiss Bank if a receiver is not appointed as certificates of pending litigation have been filed against the real estate properties involved, and there is an existing order restraining the disposition of other assets. I know of no authority for the proposition that a creditor must establish irreparable harm if the appointment of a receiver is not granted by the court. In fact, the authorities seem to support the proposition that irreparable harm need not be demonstrated. (see *Bank of Montreal v. Appcon* (1981), 33 O.R. (2d) 97).

29 See also *Bank of Nova Scotia v. D.G. Jewelry Inc.* (2002), 38 C.B.R. (4th) 7 (Ont. S.C.J.) in which Ground J. rejected the notion that it is necessary where there is security that permits the appointment of a private or court ordered receiver to establish that the property is threatened with danger, and said that the test was whether a court ordered receiver could more

effectively carry out its duties than it could if privately appointed. He stated:

I do not think that, in order to appoint an Interim Receiver pursuant to Section 47 of the BIA, I must be satisfied that there is an actual and immediate danger of a dissipation of assets. The decision of Nova Scotia Registrar Smith in *Royal Bank v. Zutphen Brothers*, [1993] N.S.J. No. 640, is not, in my view, the law of Ontario.

...

On the main issue of the test to be applied by the court in determining whether to appoint a Receiver, I do not think the Ontario courts have followed the Saskatchewan authorities cited by Mr. Tayar which require a finding that the legal remedies available to the party seeking the appointment are defective or that the appointment is necessary to preserve the property from some danger which threatens it, neither of which could be established in the case before this court. The test, which I think this court should apply, is whether the appointment of a court - appointed Receiver will enable that Receiver to more effectively and efficiently carry out its duties and obligations than it could do if privately appointed.

30 This is not a case like *Royal Bank v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Ont. Gen. Div.) in which Epstein J. (as she then was) dismissed a motion to appoint a receiver. While the loan was a demand loan and the bank's security permitted the appointment of a receiver, the parties had agreed that the loan would not be demanded absent default, and Epstein J. held that the bank, acting in bad faith, had set out to do whatever was necessary to create a default. Thus she held it was not equitable to grant the relief sought. That case is not applicable to the facts of this case.

31 Carnival relies on a decision in *Royal Bank v. Boussoulas*, [2010] O.J. No. 3611 (Ont. S.C.J.), in which Stinson J. was highly critical of the actions of the bank and its counsel in overstating its case and making unsupportable allegations of fraud in its motion affidavit material and facta filed before him and previously before Cumming J. He thus declined to continue a Mareva injunction earlier ordered by Cumming J. or appoint an interim receiver over the defendant's assets. There is no question but that a court can decline to order equitable relief in the face of misconduct on the part of a party seeking equitable relief.

32 In my view, there is no basis to refuse the order sought because of alleged misconduct on the part of BMO or its counsel. To the contrary, if anything, the shoe is on the other foot. The factum filed on behalf of Carnival is replete with allegations of false assertions on behalf of BMO, none of which have been established.

33 Carnival says the first affidavit of Mr. Findlay was false when it said that the bank first discovered the high concentration of used cars in late October, 2010, because it says the concentration was on the bank's website. This ignores the fact that the account management personnel responsible for the Carnival account did not know of the high concentration of used car leases in excess of the 30% limit, as testified to by Mr. Findlay and evident from the loan reviews for the past two years prepared by account management which stated that the used car concentration was 27.8 and 11.6 %. Although the BMO internal auditors had conducted quarterly audits, the unchallenged evidence of Mr. Findlay is that the purpose of each audit

was to review whether each individual lease has been properly papered and handled. The audit did not look at the Carnival portfolio as a whole or to see what percentage of leases were for new or used vehicles.

34 It is argued that BMO has tried to mislead the Court by suggesting that payments received by Carnival after a leased vehicle was sold were to be held in trust for BMO. There is nothing in this allegation. Mr. Findlay referred in his affidavit to the term "sold out of trust", or SOT, a term apparently widely used in the automobile industry, to refer to the situation in which a borrower such as Carnival fails to remit to its lender the proceeds of sale of a financed vehicle. Mr. Findlay did not say that there was any type of legal trust, nor did he imply it. He identified what he said were SOTs, as did PWC in its report, and while he said on cross-examination that he understood that all proceeds from sales of vehicles were paid into Carnival's account at BMO, Carnival had not paid down its loans with these proceeds as it was required to do under the loan terms, but rather had kept the money in its operating account available for its operating purposes. The fact that some of Mr. Findlay's calculations of amounts involved differ from the calculations of PWC after it was sent in to investigate the situation hardly makes the case that BMO set out to mislead the Court by a fabrication and by use of falsified numbers, as was alleged in Mr. Tayar's factum.

35 In his first affidavit Mr. Findlay referred to a concern of BMO as set out in the initial report that Mr. Hirsh was using the Carnival operating line to pay personal mortgages on his home. On cross-examination he said he understood that the money from the mortgages was put into the Carnival account as an injection of capital and he agreed that the payment of interest on the mortgages from Carnival's account was not an improper use of its resources. This is somewhat different from the statement of concern in his affidavit, but I do not see it as terribly important and as Mr. Findlay was in special account management and not managing the account, it is quite possible that the difference was due to learning more and changing his mind. I do not conclude that he set out to mislead the Court.

36 In my view, it would be preferable to have a court appointed receiver rather than a privately appointed one. Mr. Tayar said that if a private appointment were made, Carnival would litigate its right to do so. This would not at all be helpful when it is recognized that there are some 1300 vehicles under lease and any dispute as to whom lease payments were to be paid could quickly dry up or lessen the payments made. There are already a number of leases in default, and people might opportunistically decide not to pay if there were a dispute as to who was in control. The prospect of more litigation was a consideration that led Blair J. to ordering the appointment of a receiver in *Bank of Nova Scotia v. Freure Village on Clair Creek*.

37 While there may be increased costs over a private receivership, it would appear that this may well be at the expense of BMO and RBC, the other secured creditor. RBC supports the appointment of a receiver by the Court. Carnival has accounts receivable of some \$4.4 million. As at November 25, approximately \$3 million was more than 120 days old. The book value of the leases of \$30 million is therefore questionable, and the repayment of \$22.6 owing to BMO and RBC is not assured. Further, a court appointed receiver would have borrowing powers, which might be required as Cardinal has not so far been able to obtain new operating

credit lines.

38 In the circumstances the order sought by BMO is granted in the form contained in tab 3 of the application record.

Application granted.

END OF DOCUMENT

TAB 2

1996 CarswellOnt 2328, 40 C.B.R. (3d) 274

▷

1996 CarswellOnt 2328, 40 C.B.R. (3d) 274

Bank of Nova Scotia v. Freure Village on Clair Creek

Bank of Nova Scotia v. Freure Village on Clair Creek et al

Ontario Court of Justice (General Division — Commercial List)

Blair J.

Judgment: May 31, 1996

Docket: none given

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Counsel: *John J. Chapman* and *John R. Varley*, for Bank of Nova Scotia.

J. Gregory Murdoch, for Freure Group (all defendants).

John Lancaster, for Boehmers, a Division of St. Lawrence Cement.

Robb English, for Toronto-Dominion Bank.

William T. Houston, for Canada Trust

Subject: Corporate and Commercial; Insolvency

Receivers --- Appointment — Application for appointment — General.

Receivers — Appointment — Application for appointment — Under s. 101 of Courts of Justice Act court to consider whether "just and convenient" to appoint receiver or receiver-manager — Fact that creditor has right under security to appoint receiver being important factor to be considered — Court appointment possibly allowing privately appointed receiver to carry out duties more efficiently — Courts of Justice Act, R.S.O. 1990, c. C.43.

The debtor companies owed a bank in excess of \$13,200,000 on four mortgages relating to five properties. Three of the mortgages had matured but had not been repaid. The fourth had not yet matured, but was in default. The bank applied for summary judgment on the covenants on the mortgages and for the appointment of a receiver-manager for the five properties. The debtor companies argued that the bank had agreed to forbear for six months to a year and, therefore, the moneys were not due and owing at the commencement of the proceedings. They also argued that the bank could effectively exercise its private remedies and that the court

should not intervene to grant the extraordinary remedy of appointing a receiver when the bank had not yet done so.

Held:

The motions were granted.

The debtor companies' arguments with respect to the motion for summary judgment were without merit. The principal of the companies admitted that he was well aware that the bank had not waived its rights under its security or to enforce its security. There was no triable issue.

Under s. 101 of the *Courts of Justice Act* (Ont.), the court has the power to appoint a receiver or receiver-manager when it is "just and convenient" to do so. The fact that a creditor has a right under its security to appoint a receiver is an important factor to be considered. Also to be considered is whether a court appointment is necessary to enable the privately appointed receiver-manager to carry out its duties more efficiently. A creditor need not prove that it will suffer irreparable harm if no appointment is made. Where the creditor seeking the appointment has the right under its security to appoint a receiver-manager itself, the remedy is less "extraordinary" in nature. Determining whether the appointment is "just and convenient" becomes a question of whether it is more in the interests of the parties to have the court appoint the receiver. In the case at bar, it was appropriate to appoint a receiver-manager. The debtor companies had been attempting to refinance for a year and a half without success. Further, the parties could not agree on the best approach for marketing the properties. A court-appointed receiver with a mandate to develop a marketing plan could resolve that impasse, whereas a privately appointed receiver could not likely do so without further litigation. Given, however, that there seemed to be a possibility of a refinancing agreement in the near future, the appointment was postponed for three weeks.

Cases considered:

Confederation Trust Co. v. Dentbram Developments Ltd. (1992), 9 C.P.C. (3d) 399 (Ont. Gen. Div.) — referred to

Irving Ungerman Ltd. v. Galanis (1991), 4 O.R. (3d) 545, 20 R.P.R. (2d) 49 (note), 83 D.L.R. (4th) 734, 1 C.P.C. (3d) 248, (sub nom. *Ungerman (Irving) Ltd. v. Galanis*) 50 O.A.C. 176 (C.A.) — referred to

Pizza Pizza Ltd. v. Gillespie (1990), 75 O.R. (2d) 225, 45 C.P.C. (2d) 168, 33 C.P.R. (3d) 515 (Gen. Div.) — referred to

Royal Trust Corp. of Canada v. DQ Plaza Holdings Ltd. (1984), 54 C.B.R. (N.S.) 18, 36 Sask. R. 84 (Q.B.) — referred to

Swiss Bank Corp. (Canada) v. Odyssey Industries Inc. (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]) — referred to

Third Generation Realty Ltd. v. Twigg Holdings Ltd. (1991), 6 C.P.C. (3d) 366 (Ont. Gen.

Div.) — *referred to*

Statutes considered:

Courts of Justice Act, R.S.O. 1990, c. C.43

s. 101 *referred to*

Rules considered:

Ontario, Rules of Civil Procedure

r. 20.01 *referred to*

r. 20.04 *referred to*

MOTION for summary judgment on covenant on mortgages; MOTION for appointment of receiver-manager.

Blair J.:

1 There are two companion motions here, namely:

(i) the within motion by the Bank for summary judgment on the covenants on mortgages granted by "Freure Management" and "Freure Village" to the Bank, which mortgages have been guaranteed by Freure Investments; and

(ii) the motion for appointment by the Court of a receiver-manager over five different properties which are the subject matter of the mortgages (four of which properties are apartment/townhouse complexes totalling 286 units and one of which is an as yet undeveloped property).

2 This endorsement pertains to both motions.

The Motion for Summary Judgment

3 Three of the mortgages have matured and have not been repaid. The fourth has not yet matured but, along with the first three, is in default as a result of the failure to pay tax arrears. The total tax arrears outstanding are in excess of \$850,000. The Bank is owed in excess of \$13,200,000. There is no question that the mortgages are in default. Nor is it contested that the monies are presently due and owing. The Defendants argue, however, that the Bank had agreed to forebear or to stand-still for six months to a year in May, 1995 and therefore submit the monies were not due and owing at the time demand was made and proceedings commenced.

4 There is simply no merit to this defence on the evidence and there is no issue with respect to it which survives the "good hard look at the evidence" which the authorities require

the Court to take and which requires a trial for its disposition: see Rule 20.01 and Rule 20.04, *Pizza Pizza Ltd. v. Gillespie* (1990), 75 O.R. (2d) 225 (Gen. Div.); *Irving Ungerman Ltd. v. Galanis* (1993) 4 O.R. (3d) 545 (C.A.).

5 On his cross-examination, Mr. Freure admitted:

(i) that he knew the Bank had not entered into any agreement whereby it had waived its rights under its security or to enforce its security; and

(ii) that he realized the Bank was entitled to make demand, that the individual debtors in the Freure Group owed the money, that they did not have the money to pay and the \$13,200,000 indebtedness was "due and owing" (see cross-examination questions 46-54, 88-96, 233-243).

6 As to the guarantees of Freure Investments, an argument was put forward that the Bank changed its position with regard to the accumulation of tax arrears without notice to the guarantor, and accordingly that a triable issue exists in that regard.

7 No such triable issue exists. The guarantee provisions of the mortgage itself permit the Bank to negotiate changes in the security with the principal debtor. Moreover, the principal of the principal debtor and the principal of the guarantor - Mr. Freure - are the same. Finally, the evidence which is relied upon for the change in the Bank's position - an internal Bank memo from the local branch to the credit committee of the Bank in Toronto - is not proof of any such agreement with the debtor or change; it is merely a recitation of various position proposals and a recommendation to the credit committee, which was not followed.

8 Accordingly, summary judgment is granted as sought in accordance with the draft judgment filed today and on which I have placed my fiat. The cost portion of the judgment will bear interest at the *Courts of Justice Act* rate.

Receiver/Manager

9 The more difficult issue for determination is whether or not the Court should appoint a receiver/manager.

10 It is conceded, in effect, that if the loans are in default and not saved from immediate payment by the alleged forbearance agreement - which they are, and are not, respectively - the Bank is entitled to move under its security and appoint a receiver-manager privately. Indeed this is the route which the Defendants - supported by the subsequent creditor on one of the properties (Boehmers, on the Glencairn property) - urge must be taken. The other major creditors, TD Bank and Canada Trust, who are owed approximately \$20,000,000 between them, take no position on the motion.

11 The Court has the power to appoint a receiver or receiver and manager where it is "just or convenient" to do so: the *Courts of Justice Act*, R.S.O. 1990, c. 43, s. 101. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact

that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently; see generally *Third Generation Realty Ltd. v. Twigg* (1991) 6 C.P.C. (3d) 366 (Ont. Gen. Div.) at pages 372-374; *Confederation Trust Co. v. Dentbram Developments Ltd.* (1992), 9 C.P.C. (3d) 399 (Ont. Gen. Div.); *Royal Trust Corp. of Canada v. D.Q. Plaza Holdings Ltd.* (1984), 54 C.B.R. (N.S.) 18 (Sask. Q.B.) at page 21. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed: *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.* (1995), 30 C.B.R. (3d) 49 (Ont. Gen. Div. [Commercial List]).

12 The Defendants and the opposing creditor argue that the Bank can perfectly effectively exercise its private remedies and that the Court should not intervene by giving the extraordinary remedy of appointing a receiver when it has not yet done so and there is no evidence its interest will not be well protected if it did. They also argue that a Court appointed receiver will be more costly than a privately appointed one, eroding their interests in the property.

13 While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver - and even contemplates, as this one does, the secured creditor seeking a court appointed receiver - and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather, the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not. This, of course, involves an examination of all the circumstances which I have outlined earlier in this endorsement, including the potential costs, the relationship between the debtor and the creditors, the likelihood of maximizing the return on and preserving the subject property and the best way of facilitating the work and duties of the receiver-manager.

14 Here I am satisfied on balance it is just and convenient for the order sought to be made. The Defendants have been attempting to refinance the properties for 1 ¹/₂ years without success, although a letter from Mutual Trust dated yesterday suggests (again) the possibility of a refinancing in the near future. The Bank and the debtors are deadlocked and I infer from the history and evidence that the Bank's attempts to enforce its security privately will only lead to more litigation. Indeed, the debtor's solicitors themselves refer to the prospect of "costly, protracted and unproductive" litigation in a letter dated March 21st of this year, should the Bank seek to pursue its remedies. More significantly, the parties cannot agree on the proper approach to be taken to marketing the properties which everyone agrees must be sold. Should it be on a unit by unit conversion condominium basis (as the debtor proposes) or on an en bloc basis as the Bank would prefer? A Court appointed receiver with a mandate to develop a marketing plan can resolve that impasse, subject to the Court's approval, whereas a privately appointed receiver in all likelihood could not, at least without further litigious skirmishing. In the end, I am satisfied the interests of the debtors themselves, along with those of the creditors (and the tenants, who will be caught in the middle) and the orderly disposition of the property are all better served by the appointment of the receiver-manager as requested.

15 I am prepared, in the circumstances, however, to render the debtors one last chance to rescue the situation, if they can bring the potential Mutual Trust refinancing to fruition. I postpone the effectiveness of the order appointing Doane Raymond as receiver-manager for a period of three weeks from this date. If a refinancing arrangement which is satisfactory to the Bank and which is firm and concrete can be arranged by that time, I may be spoken to at a 9:30 appointment on Monday, June 24, 1996 with regard to a further postponement. The order will relate back to today's date, if taken out.

16 Should the Bank be advised to appoint Doane Raymond as a private receiver/manager under its mortgages in the interim, it may do so.

17 Counsel may attend at an earlier 9:30 appointment if necessary to speak to the form of the order.

Motions granted.

END OF DOCUMENT

BANK OF MONTREAL

- and -

**BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL
CORPORATION AND BODKIN LEASING CORPORATION**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO**

**BOOK OF AUTHORITIES OF THE
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LSUC#: 17663W

Solicitors for the Applicant

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

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BETWEEN:

BANK OF MONTREAL

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- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

**APPLICATION RECORD
(VOLUME I OF IV)**

October 3, 2011

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(as of October 3, 2011)

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AND TO: DEPARTMENT OF JUSTICE CANADA
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Bruderheim, AB T0B 0S0

AND TO: REFRIGERATION THERMOKING
180 Rue Royal
Les Coteaux, QC J7X 1A6

AND TO: W.C. REID DISTRIBUTOR LTD.
75 Borrowman Drive
Chatham, ON N7M 5J5

AND TO: CHN TRUCK & EQUIPMENT
31 Kerr Crescent
Guelph, ON N1H 6H9

**AND TO: INDUSTRIAL ALLIANCE INSURANCE
FINANCIAL SERVICES INC.**
1080, Grande Allee Ouest
Quebec City, QC G1K 7M3

AND TO: COMPUTERSHARE TRUST COMPANY OF CANADA
100 University Avenue
9th Floor, North Tower
Toronto, ON M5J 2Y1

AND TO: COMPUTERSHARE TRUST COMPANY OF CANADA
1500 University Street
Suite 700
Montreal, QC H3A 3S8

AND TO: SOUND TRUST
c/o Canadian Imperial Bank of Commerce
5th Floor, BCE Place
161 Bay Street
Toronto, ON M5J 2S8

AND TO: MINISTRY OF GOVERNMENT SERVICES
Companies and Personal Property Security Branch
393 University Avenue
Suite 200
Toronto ON M5G 2M2

Attention: Director, OBCA

TOR01: 4721780: v2

INDEX

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

INDEX

TAB

DOCUMENT

- | | |
|-------------|--|
| 1. | Notice of Application returnable October 7, 2011 |
| 2. | Affidavit of Paul James Findlay sworn October 3, 2011 |
| Exhibit "A" | Corporation Profile Report for Bodkin Financial Corporation
("Financial") dated September 7, 2011 |
| | Corporations Canada Report for Bodkin Capital Corporation
("Capital") dated September 7, 2011 |
| | Corporations Canada Report for Bodkin Leasing Corporation
("Leasing") dated September 7, 2011 |

TAB

DOCUMENT

Exhibit "B"	Bank of Montreal (" BMO ") Term Sheet dated September 20, 2011
Exhibit "C"	Guarantee for Indebtedness of an Incorporated Company dated May 3, 2004 granted by Capital
	Guarantee for Indebtedness of an Incorporated Company dated May 3, 2004 granted by Leasing
Exhibit "D"	Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Financial
	Movable Hypothec dated April 29, 2004 granted by Financial
	Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Financial
	Amendment and Acknowledgement Agreement dated December 15, 2005
Exhibit "E"	Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Capital
	Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Leasing
	Movable Hypothec dated April 29, 2004 granted by Capital
	Movable Hypothec dated April 29, 2004 granted by Leasing
	Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Capital
	Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Leasing
	Acknowledgement and Agreement dated December 15, 2005 granted by Capital and Leasing
Exhibit "F"	Summary of PPSA/RPMRR Search Results
Exhibit "G"	Master Assignment Agreement made as of November 26, 1997, as amended by the Amendment to Master Assignment Agreement effective as of May 1, 2000 and the Second Amendment to Master Purchase and Assignment Agreement effective as of December 14, 2005
Exhibit "H"	Sun Life Assurance Company of Canada (" Sun Life ") term sheet dated

TAB

DOCUMENT

- February 24, 2010
- Exhibit "I" Priority / Inter-Creditor Agreement dated December 12, 2005
- Exhibit "J" BMO Term Sheet dated April 20, 2009
- Exhibit "K" Audited consolidated financial statements for the fiscal year ended August 31, 2009
- Exhibit "L" Unaudited consolidated financial statements for the fiscal year ended August 31, 2010
- Exhibit "M" Acknowledgement letters dated March 14, 2011, April 25, 2011, May 12, 2011, June 21, 2011, July 19, 2011, August 11, 2011 and September 20, 2011
- Exhibit "N" Margin Deficit Chart
- Exhibit "O" Forbearance letter agreement dated June 18, 2010
- Exhibit "P" Forbearance amendment dated August 20, 2010
- Exhibit "Q" Second forbearance amendment dated September 29, 2010
- Exhibit "R" Forbearance letter agreement dated January 25, 2011
- Exhibit "S" E-mail dated September 2, 2011 from counsel to Applicants to counsel to Respondents, Notice of Intention to Enforce Security ("NITES") from BMO to Financial dated September 2, 2011, NITES from BMO to Capital dated September 2, 2011 and NITES from BMO to Leasing dated September 2, 2011
- Exhibit "T" Demand letter from BMO to Financial dated October 3, 2011
- Demand letter from BMO to each of Capital and Leasing dated October 3, 2011
- Exhibit "U" Consent of PricewaterhouseCoopers Inc. dated October 3, 2011
3. Draft Order
4. Blackline of Draft Order to Model Receivership Order dated January 15, 2010

TAB 1



Court File No.

CV-11-9412-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
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BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on Friday, October 7, 2011 at 10:00 a.m. or as soon thereafter as the application may be heard at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS 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, where 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 not later than 2 p.m. on the day 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: October 3, 2011

Issued by


Local Registrar

Address of court office:

330 University Avenue
7th Floor
Toronto, ON M5G 1R7

TO: THE ATTACHED SERVICE LIST

APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- (a) an Order abridging the time for, and validating the service of, the within application such that this Application is properly returnable on October 7, 2011;
- (b) 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 PricewaterhouseCoopers Inc. as receiver (the "Receiver") over all the property, assets and undertakings of Bodkin Financial Corporation ("Financial"), Bodkin Capital Corporation ("Capital") and Bodkin Leasing Corporation ("Leasing", and together with Financial and Capital hereinafter referred to as the "Respondents" or "Bodkin"), in substantially the form of the draft order included in the Application Record at Tab "3"; and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) Bodkin carries on business as a provider of vehicle and equipment financing to a wide range of commercial customers nationally;
- (b) Since May 2004, Bank of Montreal ("BMO" or the "Bank") has provided credit facilities to Financial to finance Bodkin's operations pursuant to various term sheets and lending agreements;
- (c) Financial is indebted to the Bank in the aggregate principal amount of approximately \$10,354,803.27, as at September 30, 2011, plus all applicable interest, fees, amounts and costs thereon, in respect of certain credit facilities extended by BMO to Financial;
- (d) Capital and Leasing are each indebted to the Bank in the aggregate principal amount of approximately \$10,354,803.27 as at September 30, 2011, plus all applicable interest and costs thereon, under certain guarantees made by each of

Capital and Leasing in favour of BMO guaranteeing all of the obligations of Financial to BMO to the maximum amount of \$35,000,000;

- (e) BMO holds security over all of the personal property of Bodkin pursuant to certain security documents (collectively, the "**Security Documents**"). Upon default under the Security Documents, the Bank has the ability to appoint a receiver over the property of Bodkin subject to the security;
- (f) the Respondents have committed various defaults under the BMO credit facilities and the Security Documents and the security interests of the Bank are enforceable;
- (g) Bodkin has been in a liquidity crisis since March 2010 and the Bank is unaware of any sources of liquidity available to Bodkin to permit Bodkin to meet its working capital obligations as they come due and continue to operate in the ordinary course of business;
- (h) the Bank refrained from demanding repayment of the BMO credit facilities, permitted the existence of margin deficits and overadvanced funds to Bodkin for an 19-month period of time in an effort to facilitate a going concern sale of Bodkin's business;
- (i) since the spring of 2009, Bodkin has completed: (i) an informal solicitation process in an attempt to locate a party that was prepared to re-finance Bodkin's indebtedness, provide an equity investment and/or purchase the Bodkin leasing business on a going concern basis; and (ii) a formal sales process with the assistance of a financial advisor, PricewaterhouseCoopers Corporate Finance Inc.;
- (j) Bodkin has been able to successfully negotiate a proposed sale transaction with affiliates of Equirex Leasing Corp. ("**Equirex**"), with the consent of its two primary secured stakeholders, the Bank and Sun Life Assurance Company of Canada;

- (k) on September 2, 2011, the Bank delivered a notice of intention to enforce security pursuant to section 244(1) of the BIA to each of the Respondents. On October 3, 2011, the Bank demanded payment from each of the Respondents;
- (l) the appointment of a Receiver to complete the proposed Equirex sale transaction is in the best interest of all of Bodkin's stakeholders, as it will allow for the going concern sale of the Bodkin business to Equirex, which will provide continued employment to the majority of Bodkin's current employees, and the funds to be received by the Receiver from the sale may result in the BMO credit facilities being satisfied in full and funds being available to be distributed to the other stakeholders of Bodkin;
- (m) the appointment of a Receiver is just and convenient;
- (n) section 243 of the BIA
- (o) section 101 of the CJA;
- (p) rules 1.04, 2.01, 2.03, 3.02, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (q) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) the Affidavit of Paul James Findlay, sworn on October 3, 2011 and the exhibits referred to therein; and
- (b) such further and documentary evidence as counsel may advise and this Honourable Court may permit.

October 3, 2011

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BANK OF MONTREAL

- and -

BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION

Applicant

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF APPLICATION

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Solicitors for the Applicant

TAB 2

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

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BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

**AFFIDAVIT OF PAUL JAMES FINDLAY
(sworn October 3, 2011)**

**I, PAUL JAMES FINDLAY, of the City of Vaughan, in the Province of Ontario,
MAKE OATH AND SAY THAT:**

1. I am a Senior Account Manager in the Special Accounts Management Unit of Bank of Montreal ("BMO" or the "Bank"). Since March 2010, I have been responsible for the administration of the Bank's credit facilities made available to the Respondents, and as such I have personal knowledge of the matters deposed herein, save and except where stated to be based on information obtained from other sources, in which case I have identified the source of the information and believe such information to be true.

2. This affidavit is filed in support of an application by BMO for the appointment of PricewaterhouseCoopers Inc. ("PwC") as receiver (the "**Receiver**") over all of the property, assets and undertaking of Bodkin Financial Corporation ("**Financial**"), Bodkin Capital Corporation ("**Capital**") and Bodkin Leasing Corporation ("**Leasing**", and together with Financial and Capital hereinafter referred to collectively as "**Bodkin**") pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and section 101 of the *Courts of Justice Act* (Ontario).

I. BACKGROUND

A. Bodkin's Business

3. Bodkin carries on business as a provider of vehicle and equipment financing to a wide range of commercial customers nationally, with an emphasis on financing new and used assets up to \$100,000 in value. Bodkin originates new leasing business mainly through its network of independent brokers, of which it deals with approximately twenty on a frequent basis. The average Bodkin leasing transaction is approximately \$40,000 in value.

4. The Bodkin business is operated through two of Financial's subsidiaries, Capital and Leasing. Leasing was incorporated in 1950 and has been in the business of leasing vehicles to commercial customers since that time. Capital was incorporated in 1996 and is focused on providing equipment financing to commercial customers. Attached hereto and marked as **Exhibit "A"** is a copy of a Corporation Profile Report for Financial obtained from the Companies and Personal Property Security Branch of the Ontario Ministry of Consumer and Business Services dated September 7, 2011, and copies of a Corporations Canada report for each of Capital and Leasing obtained from Industry Canada dated September 7, 2011.

5. Bodkin typically purchased new and used equipment and vehicles with funds drawn from its Operating Credit Facility (as defined below) with the Bank. Once the equipment and vehicles were purchased and leases were entered into with third parties, the leases were either assigned to Sun Life (as defined below) under a lease securitization facility, which is discussed in greater detail below, or transferred to Bodkin's Wholesale Leasing Credit Facility, Heavy Duty Truck and Trailer Leasing Facility or New Equipment Leasing Facility (as each such capitalized term is defined below) with the Bank.

6. Bodkin's head office is located at premises municipally known as 2150 Dunwin Drive, Unit # 1 in Mississauga, Ontario (the "**Head Office**"). Bodkin leases the Head Office premises and maintains sales, collection and credit staff that operate out of home offices across Canada. Bodkin does not own any real property, and, in addition to the Head Office, leases real property in Vancouver, British Columbia, which is currently being sublet by Bodkin to a third-party tenant.

7. I have been advised by Mr. John D. Mitchell, Chief Financial Officer of Bodkin ("**Mr. Mitchell**"), that Bodkin employed, as of September 27, 2011, thirty-two full-time employees, one part-time employee, and four contract staff. No Bodkin employees or consultants are represented by a union, and Bodkin does not sponsor a pension plan for any of its employees or consultants.

B. Relationship with Secured Stakeholders - BMO

1. Bodkin's Obligations to the Bank

8. Since May 2004, BMO has provided credit facilities to Financial to finance Bodkin's operations pursuant to various term sheets and lending agreements, the most recent of which is a term sheet dated September 20, 2011 and accepted by Financial on September 21, 2011 (the "**September 20/11 Term Sheet**"). Attached hereto and marked as **Exhibit "B"** is a copy of the September 20/11 Term Sheet.

9. Pursuant to the terms of the September 20/11 Term Sheet, BMO has extended the following credit facilities to Financial (collectively, the "**BMO Credit Facilities**"):

- (a) a demand operating facility in the aggregate maximum amount of \$10,000,000 effective September 20, 2011 to September 25, 2011, and \$9,000,000 effective September 26, 2011 to October 3, 2011 to finance daily business operations ("**Operating Credit Facility**");
- (b) a demand wholesale leasing credit facility in the aggregate maximum amount of \$3,344,497.94 to finance the acquisition and leasing of new and used vehicles ("**Wholesale Leasing Credit Facility**");

- (c) a demand credit facility in the aggregate maximum amount of \$2,835,752.64 to finance the acquisition and leasing of new and used heavy duty trucks and trailers (**"Heavy Duty Truck and Trailer Leasing Credit Facility"**);
- (d) a demand credit facility in the aggregate maximum amount of \$860,927.86 to finance the acquisition and leasing of specific types of new equipment (**"New Equipment Leasing Credit Facility"**); and
- (e) a \$5,000 corporate MasterCard facility (**"MasterCard Facility"**).

10. As set out in the September 20/11 Term Sheet, each of the Wholesale Leasing Credit Facility, Heavy Duty Truck and Trailer Leasing Credit Facility and New Equipment Leasing Credit Facility are fully drawn and BMO will not be financing any additional leases under any of these facilities.

11. In connection with the BMO Credit Facilities provided to Financial, BMO has obtained guarantees from Capital and Leasing that guarantee payment to the Bank of all present and future debts and liabilities owed to the Bank by Financial, to the maximum amount of \$35 million. Attached hereto and marked as **Exhibit "C"** are copies of a Guarantee for Indebtedness of an Incorporated Company dated May 3, 2004 granted by Capital in favour of the Bank and a Guarantee for Indebtedness of an Incorporated Company dated May 3, 2004 granted by Leasing in favour of the Bank (collectively, the **"Guarantees"**).

12. As of September 30, 2011, an aggregate principal amount of \$10,354,803.27, exclusive of all applicable costs, fees and interest, was outstanding under the BMO Credit Facilities, which principal amount is comprised of the following:

- (a) \$3,573,271.78 owing under the Operating Credit Facility;
- (b) \$3,242,947.97 owing under the Wholesale Leasing Credit Facility;
- (c) \$2,716,340.07 owing under the Heavy Duty Truck and Trailer Leasing Facility;
- (d) \$821,362.00 owing under the New Equipment Leasing Facility; and

- (e) \$881.45 owing under the MasterCard Facility.

13. As set out in the September 20/11 Term Sheet and predecessor term sheets between the Bank and Financial, and as confirmed in the Supplemental Forbearance Agreement (as defined below), the indebtedness owed by Financial to the Bank under the BMO Credit Facilities is payable to the Bank on demand, which demand the Bank is entitled to make at any time in its sole discretion.

2. Security Granted to the Bank

14. The indebtedness and liabilities of Financial to the Bank from time to time under or in connection with the BMO Credit Facilities are secured by, among other things, the following (collectively, the "**Financial Security Documents**"):

- (a) Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Financial in favour of the Bank;
- (b) Movable Hypothec dated April 29, 2004 granted by Financial in favour of the Bank;
- (c) Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Financial in favour of the Bank; and
- (d) Amendment and Acknowledgement Agreement dated December 15, 2005 between BMO and Financial.

Attached hereto and marked as **Exhibit "D"** are copies of the Financial Security Documents.

15. The obligations of Capital and Leasing to the Bank from time to time under or in connection with their respective Guarantees are secured by the following (collectively, the "**Capital and Leasing Security Documents**", and together with the Financial Security Documents hereinafter referred to as the "**Security Documents**"):

- (a) Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Capital in favour of the Bank;

- (b) Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Leasing in favour of the Bank;
- (c) Movable Hypothec dated April 29, 2004 granted by Capital in favour of the Bank;
- (d) Movable Hypothec dated April 29, 2004 granted by Leasing in favour of the Bank;
- (e) Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Capital in favour of the Bank;
- (f) Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Leasing in favour of the Bank; and
- (g) Acknowledgement and Agreement dated December 15, 2005 granted by Capital and Leasing in favour of the Bank.

Attached hereto and marked as **Exhibit "E"** are copies of the Capital and Leasing Security Documents.

16. Pursuant to the terms of the Security Documents, each of Financial, Capital and Leasing have respectively:

- (a) granted to the Bank a security interest in all of their present and future inventory, equipment, intangibles, chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom;
- (b) granted to the Bank a floating charge in all of their present and future undertaking and all of their present and future property and assets, real and personal, movable or immovable, of whatsoever nature and kind, subject to the exceptions set forth therein;
- (c) granted to the Bank a security interest in all vehicles purchased with funds provided by the Bank, all leases with respect to such vehicles and all rights, benefits and proceeds arising out of such vehicles or leases; and

- (d) hypothecated in favour of the Bank all of their present and future property, both corporeal and incorporeal, then owned or thereafter acquired.

17. In the Supplemental Forbearance Agreement, Bodkin acknowledged and agreed that: (a) the Security Documents shall secure, and continue to secure, all of the respective obligations of Financial, Capital, and Leasing to the Bank, present and future, direct or indirect, absolute or contingent, matured or not; and (b) each of the Security Documents is a legal, valid and binding obligation enforceable against Bodkin and Bodkin's property in accordance with the respective terms of such Security Document.

18. Pursuant to the terms of the Security Documents, each of Financial, Capital and Leasing has respectively agreed that, upon a default under the applicable Security Document, the Bank is entitled to appoint a Receiver by instrument in writing and/or seek the Court-appointment of a Receiver. A default under such Security Documents occurs when, among other things, the respective Bodkin entity is in default of any of its obligations to the Bank or has defaulted in the due performance of any covenant given to the Bank.

19. As Bodkin leases vehicles and equipment to commercial customers across Canada, the Bank has registered its security interests in the property of each of Financial, Capital and Leasing with the registries maintained under the *Personal Property Security Act* (the "PPSA") in every province and territory in Canada (other than the Province of Quebec). The Bank has also registered its hypothecs over the property of each of Financial, Capital and Leasing in the Register of Personal and Movable Real Rights (the "RPMRR") maintained in Quebec.

20. I have been advised by Mr. H. Alexander Zimmerman, a partner at Borden Ladner Gervais LLP ("BLG"), counsel to the Bank, that the chart attached hereto and marked as **Exhibit "F"** is a summary prepared by BLG of the security interest registrations filed by the Bank and other secured parties against each of Financial, Capital and Leasing under the PPSA of each province and territory in Canada (other than Quebec) and the hypothec registrations filed against each of Financial, Capital and Leasing under the RPMRR in Quebec, as of the dates set out in the chart.

C. Relationship with Secured Stakeholders - Sun Life

1. Securitization Facility

i) Background

21. In 1997, Capital and Leasing, among other affiliated companies, entered into a securitization arrangement with Mutual Life Assurance Company of Canada ("**Mutual Life**"), a predecessor of Sun Life Assurance Company of Canada ("**Sun Life**"). Attached hereto and marked as **Exhibit "G"** is a copy of the Master Assignment Agreement made as of November 26, 1997 among Mutual Life, Capital, Leasing, Bodkin Equipment Leasing Corporation ("**Equipment**") and 551520 Ontario Limited ("**551520**"), as amended by the Amendment to Master Assignment Agreement effective as of May 1, 2000 among Mutual Life (then known as Clarica Life Insurance Company), Capital, Leasing, Equipment and 551520 (amending the name of the agreement to be known as the Master Purchase and Assignment Agreement) and the Second Amendment to Master Purchase and Assignment Agreement effective as of December 14, 2005 among Sun Life, Financial, Capital, Leasing, Equipment and 551520 (collectively, the "**MPAA**").

22. Pursuant to section 2 of the MPAA, Capital and Leasing have the option, from time to time, to offer to make a bulk assignment of equipment and vehicle leases, and certain rights under the leases, to Sun Life, with the purchase price of the assignment being the net book value of the assigned leases, less a discount calculated at a rate provided therein. The equipment and vehicles subject to the leases assigned to Sun Life were not sold or assigned to Sun Life and continued to be the property of Bodkin. However, Bodkin granted a security interest in such equipment and vehicles to Sun Life.

23. Under the terms of the MPAA, Capital and Leasing were:

- (a) appointed as agent of Sun Life;
- (b) required to pay to Sun Life, on the payment date in respect of each lease assigned to Sun Life (which is the first day of the month), all receivables actually received by Capital and Leasing under each such lease;

- (c) required to use their best efforts, as agent, to collect or cause to be collected from each lessee the receivables and payments owed under the leases assigned to Sun Life;
- (d) required to hold in trust and remit to Sun Life all payments collected or received under the leases assigned to Sun Life;
- (e) required to continue to duly and punctually perform and observe all of the covenants and obligations of the lessor under each lease assigned to Sun Life and maintain such records in respect of each such lease and the equipment leased thereunder as prudent business practice would require;
- (f) required to attend to all dealings with lessees with respect to early buyouts or upgrades of any leases assigned to Sun Life and account to Sun Life for the proceeds thereof; and
- (g) required to prepare and provide to Sun Life monthly reporting for each of the leases assigned to Sun Life.

24. Under the Sun Life securitization facility, the amount of financing available to Capital and Leasing was determined by term sheets entered into among Sun Life, Capital and Leasing, amongst others. Attached hereto and marked as **Exhibit "H"** is a copy of the most recent Sun Life term sheet dated February 24, 2010 (the "**Sun Life Term Sheet**").

25. I have been informed by Mr. Mitchell that the net present value of the lease receivables assigned to Sun Life under the MPAA was approximately \$143,123,767 as of August 31, 2011, and the Sun Life securitization facility constituted approximately 7,000 equipment and vehicle leases as of that date. The lease receivables are contained within the following two lease portfolios: (i) Book 1, which, Mr. Mitchell has informed me had a net present value of approximately \$14,209,666 as of August 31, 2011; and (ii) Book 2, which was established in December 2008 and, Mr. Mitchell has informed me, had a net present value of approximately \$128,914,101 as of August 31, 2011. Book 1 is currently being run off, and no new leases have been securitized under Book 1 since November 2008.

26. Additionally, as set out in the Sun Life Term Sheet:

- (a) the securitization facility is cross-defaulted with Bodkin's credit facilities with the Bank;
- (b) Capital and Leasing covenanted that their tangible net worth would be no less than \$7,500,000, their Leverage Ratio (as defined below) would not exceed 22.5 to 1 and their Interest Coverage Ratio (as defined below) would be no less than 1.75 to 1;
- (c) Sun Life had the ability, acting in its sole discretion, to refrain from releasing funds from the Reserve Fund (as defined below) to Capital and Leasing, to halt funding and to terminate the securitization facility if any of the following delinquency and loss triggers were breached under the securitized lease portfolios (collectively, the "**Lockup Triggers**"):
 - (i) rolling average Delinquency Ratio¹ is greater than 3.0% on a rolling 3-month basis for both Book 1 and Book 2;
 - (ii) rolling average Loss Ratio (an annualized ratio)² is greater than 3.5% on a rolling 3-month basis or greater than 2.5% on a rolling 12-month basis for Book 1; and
 - (iii) rolling average Loss Ratio is greater than 2.5% on a rolling 3-month basis or greater than 2.0% on a rolling 12-month basis for Book 2.

27. The Sun Life securitization facility is a vital component of Bodkin's business. Based on Bodkin's 2009 Audited Financial Statements and its 2010 Unaudited Financial Statements (as each such capitalized term is defined below), approximately 66.1%, 53.7% and 56.6% of

¹ Defined in the Sun Life 2010 Term Sheet to mean, for any month, the ratio of (a) the outstanding balance on all obligations greater than thirty (30) days overdue at the end of such month to (b) the aggregate outstanding balance as at the beginning of such month.

² Defined in the Sun Life 2010 Term Sheet to mean the monthly Net Losses (which is defined, for any month, as the sum, without duplication, of the outstanding balances of all obligations that are in default at the end of such month less any recoveries for such obligations received during such month) divided by the net present value at the beginning of the month.

Bodkin's total revenue was income earned by Bodkin under the Sun Life securitization facility respectively for the 2008, 2009 and 2010 fiscal years.

28. The Sun Life Term Sheet expired on January 31, 2011. I have been informed by Mr. Paul H. Royds, Bodkin's President and Chief Executive Officer ("Mr. Royds"), that Sun Life has not renewed its securitization facility with Bodkin and since that date has purchased equipment and vehicle leases under the MPAA on an *ad hoc* basis.

ii) *Reserve Fund*

29. Pursuant to section 3 of the MPAA, Capital and Leasing were required, at the time when an assignment of leases to Sun Life was completed, to contribute to a reserve fund (the "**Reserve Fund**") a set percentage of the assignment price of the leases (the "**Contribution Threshold**").

30. Section 3 of the MPAA also provided that at no time would Capital and Leasing be required to pay into or to maintain an amount in the Reserve Fund in excess of a set percentage of the net book value of all outstanding assigned leases as calculated at any time (the "**Release Threshold**"). Pursuant to section 9 of the Master Reserve Fund Agreement attached as Schedule "A" to the MPAA, any amounts in the Reserve Fund in excess of 6.5% of the net book value of the receivables were to be released to Capital and Leasing. The Release Threshold has since been increased, as set forth in further detail in paragraph 51 below.

31. I understand that the Reserve Fund is intended to act as collateral for any delinquencies or credit losses in the leases that were assigned by Bodkin to Sun Life, and to fund costs associated with the administration of the assigned leases by Bodkin, such as default and enforcement costs. Pursuant to a Priority / Inter-Creditor Agreement dated December 12, 2005 (the "**Priority Agreement**") among Sun Life, the Bank, Bodkin and Industrial Alliance Insurance and Financial Services Inc. ("**Industrial**"), each of Industrial and the Bank released any security interest it may have in the Reserve Fund. However, the Bank did not therein release, and has not otherwise released, the security interest it has in any moneys payable to Bodkin out of the Reserve Fund from time to time. Attached hereto and marked as **Exhibit "I"** is a copy of the Priority Agreement. I understand that Industrial is no longer a creditor of Bodkin.

32. I have been informed by Mr. Mitchell that the balance in the Reserve Fund as at August 31, 2011 was approximately \$13,606,980.14. Bodkin is entitled, under the Master Reserve Fund Agreement, to a return of all moneys remaining in the Reserve Fund following the termination of all of the leases in Book 1 and Book 2 and the payment of any losses incurred by Sun Life in connection therewith. This contingent receivable is Bodkin's sole asset of any material value at this time.

D. Relationship with Other Stakeholders – CRA

33. I have been informed by Mr. Mitchell that the voting control of Bodkin changed effective August 31, 2010 as a result of a transaction entered into by certain of Financial's shareholders. Mr. Mitchell has indicated that this change of control entitled Bodkin to revalue its assets for tax purposes, which revaluation created sufficient tax losses to eliminate Bodkin's income tax liability for the 2009 and 2010 fiscal years and to entitle Bodkin to recover taxes paid by it for the 2008 fiscal year.

34. I have also been informed by Mr. Mitchell that tax returns for fiscal year 2010 for Capital and Leasing were filed on January 30, 2011. Notices of assessment for 2010, and notices of reassessment with respect to the carry-back of non-capital losses to 2008 and 2009, were received by Bodkin during the week of February 25, 2011. The 2009 tax liabilities for Capital and Leasing were offset by the non-capital loss carry-back from 2010. Leasing received a refund of approximately \$74,373 from the Canada Revenue Agency ("CRA") during the week of February 25, 2011. Additionally, Leasing made payments to CRA in respect of its 2009 tax liability of \$48,610 in September 2010 by way of a CRA holdback of a GST/HST refund, and \$87,500 in January 2011. Capital made payment to CRA on March 8, 2011 of \$23,176.53, with respect to a 2010 capital tax liability. On March 9, 2011 CRA withheld this same amount of \$23,176.53 from Capital's GST/HST refund for the month of January 2011 in settlement of the 2010 capital tax liability as well. Subsequently, CRA refunded the amount of \$23,176.53 to Capital due to Capital's earlier payment of this amount.

35. Additionally, during the week of February 25, 2010, a CRA representative indicated that the outstanding reassessment notices for fiscal years 2005 to 2008 in connection with the CRA audit of Leasing in 2010 had not been processed yet by the Sudbury Taxation Office. Bodkin

received such re-assessment notices on May 16, 2011, indicating that a refund of approximately \$336,000 was in the process of being mailed to Bodkin. I have been informed by Mr. Mitchell that Bodkin received this refund from the CRA on May 24, 2011. These monies, as well as the monies received by Bodkin in respect of the tax refunds referred to in paragraph 34 above, have been expended by Bodkin in carrying on its business in the ordinary course.

II. BODKIN'S FINANCIAL DIFFICULTIES

A. Breaches of Covenants and Defaults

1. BMO Credit Facilities

36. Under the terms of the credit facilities provided by the Bank to Bodkin, Bodkin covenanted to not exceed certain financial ratios. Pursuant to the terms of the term sheet dated April 20, 2009 and accepted by Financial on April 23, 2009 (the "**April 2009 Term Sheet**"), Financial covenanted to the Bank that Bodkin would maintain, on a consolidated basis, a total debt to tangible net worth ratio (the "**Leverage Ratio**") not exceeding 6.50:1. Financial also covenanted to the Bank that Bodkin's consolidated ratio of earnings before interest and taxes to interest expenses (the "**Interest Coverage Ratio**") would be no less than 1.75:1. Attached hereto and marked as **Exhibit "J"** is a copy of the April 2009 Term Sheet.

37. As noted above, the most recent term sheet entered into by Financial and the Bank is the September 20/11 Term Sheet. Under the terms of the September 20/11 Term Sheet, Financial has covenanted that:

- (a) Bodkin's consolidated Leverage Coverage ratio would not exceed 5.25:1;
- (b) Bodkin's consolidated Interest Coverage Ratio would be no less than 1.75:1; and
- (c) Bodkin's consolidated Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as such capitalized terms are defined in the July 19/11 Term Sheet) (the "**Securitization Ratio**").

38. Based on the Bank's review of the audited consolidated financial statements of Bodkin for the fiscal year ended August 31, 2009 (the "**2009 Audited Financial Statements**"), which the Bank received in February 2010, it became apparent that Bodkin was in breach of the

financial covenants under the April 2009 Term Sheet and, as a result, was in default of the terms of the Bank's credit facilities. Attached hereto and marked as **Exhibit "K"** is a copy of the 2009 Audited Financial Statements.

39. According to the information contained in the 2009 Audited Financial Statements, Bodkin's Leverage Ratio was 43.32:1 as of August 31, 2009, notwithstanding that Financial covenanted that the Leverage Ratio would not exceed 6.50:1 under the April 2009 Term Sheet. Furthermore, according to information contained in Bodkin's unaudited interim consolidated financial statements for the fiscal periods ended February 28, 2010, March 31, 2010 and April 30, 2010, Bodkin's Leverage Ratio was 13.49:1, 12.76:1 and 14.27:1 as at such dates respectively. Additionally, Bodkin's Interest Coverage Ratio was -0.44:1 as of August 31, 2009, notwithstanding that Financial covenanted that the Interest Coverage Ratio would be no less than 1.75:1 under the April 2009 Term Sheet (collectively, the "**Original Covenant Breaches**"). The Original Covenant Breaches were identified in the Original Forbearance Agreement (as defined below), the terms and conditions of which were acknowledged by Bodkin. The Original Covenant Breaches were also expressly acknowledged by Bodkin under the Supplemental Forbearance Agreement.

40. In addition to the Original Covenant Breaches, as of its fiscal year ended August 31, 2010, Bodkin was still in breach of its Leverage Ratio and its Interest Coverage Ratio and was also in breach of its Securitization Ratio. Based on the information contained in Bodkin's unaudited consolidated financial statements for the fiscal year ended August 31, 2010 (the "**2010 Unaudited Financial Statements**"):

- (a) Bodkin's consolidated Leverage Ratio was 5.29:1;
- (b) Bodkin's consolidated Interest Coverage Ratio was 0.49:1; and
- (c) Bodkin's consolidated Securitization Ratio was 104%

as at August 31, 2010, in breach of its Leverage Ratio, Interest Coverage Ratio and Securitization Ratio covenants (collectively, the "**August 31/10 Covenant Breaches**"). Attached hereto and marked as **Exhibit "L"** is a copy of the 2010 Unaudited Financial

Statements. The August 31/2010 Covenant Breaches were acknowledged by Bodkin in the Supplemental Forbearance Agreement.

41. In addition to the Original Covenant Breaches and the August 31/10 Covenant Breaches, Bodkin's unaudited interim consolidated financial statements for the fiscal periods ended September 30, 2010, October 31, 2010, November 30, 2010, December 31, 2010, January 31, 2011, February 28, 2011, March 31, 2011, April 30, 2011, May 31, 2011, June 30, 2011 and July 31, 2011 disclosed that the Securitization Ratio was 100%, 98%, 90%, 80%, 80%, 79%, 74%, 71%, 67%, 61% and 59% as at such dates respectively (collectively the "**Securitization Ratio Breaches**"). Bodkin's unaudited interim consolidated financial statements for the fiscal periods ended December 31, 2010, January 31, 2011, February 28, 2011, May 31, 2011, June 30, 2011 and July 31, 2011 disclosed that the Interest Coverage Ratio was 1.35:1, 1.52:1, 1.63:1, 1.65:1, 1.68:1 and 1.67:1 as at such dates respectively (collectively, the "**Interest Coverage Ratio Breaches**"). The Securitization Ratio Breaches have been acknowledged by Bodkin in the Supplemental Forbearance Agreement and the acknowledgement letters dated March 14, 2011, April 25, 2011, May 12, 2011, June 21, 2011, July 19, 2011, August 11, 2011 and September 20, 2011, copies of which are attached hereto as **Exhibit "M"** (collectively, the "**Acknowledgement Letters**"). The Interest Coverage Ratio Breaches have also been acknowledged by Bodkin in the March 14, 2011, April 25, 2011, July 19, 2011, August 11, 2011 and September 20, 2011 Acknowledgment Letters.

42. As a result, Bodkin was in breach of its:

- (a) Leverage Ratio covenant with the Bank as at the fiscal year ended August 31, 2009, fiscal periods ended February 28, 2010, March 30, 2010, April 2010 and fiscal year ended August 31, 2010;
- (b) Interest Coverage Ratio covenant with the Bank as at the fiscal year ended August 31, 2009, fiscal year ended August 31, 2010, and fiscal periods ended December 31, 2010, January 31, 2011, February 28, 2011, May 31, 2011, June 30, 2011 and July 31, 2011; and

- (c) Securitization Ratio as of the fiscal periods ended August 31, 2010 through to and including July 31, 2011 (collectively, the "**Covenant Breaches**").

2. Sun Life Securitization Facility

43. As set out above, under the Sun Life Term Sheet, Capital and Leasing covenanted that Bodkin's consolidated Leverage Ratio and Interest Coverage Ratio would not exceed certain thresholds. As evidenced by the 2009 Audited Financial Statements, as of the fiscal year ended August 31, 2009, Bodkin was in breach of the Leverage Ratio and Interest Coverage Ratio covenants it had made to Sun Life.

44. Additionally, as set out in the 2009 Audited Financial Statements and the Sun Life Term Sheet, Capital and Leasing were in breach of the Lockup Triggers as of the fiscal year ended August 31, 2009. As a result, the Sun Life securitization facility was placed under an Event of Termination. Under the Sun Life Term Sheet, any unresolved breach of the Lockup Triggers permitted Sun Life, in its sole discretion, to halt additional funding and possibly terminate the securitization facility.

45. In addition to the breaches of the Lockup Triggers and the covenants contained in the Sun Life Term Sheet, the Sun Life Term Sheet contains a cross-default provision whereby any default under Bodkin's credit facilities with the Bank could result in an immediate halt to any additional funding, a lockup of the Reserve Fund and a termination of the securitization facility. As a result, due to the defaults under the Bank's credit facilities arising due to the Covenant Breaches, Bodkin was also in default under the Sun Life Term Sheet under the cross-default provision.

B. Liquidity Issues

1. Establishment of Margin Deficits

46. It came to the Bank's attention in March 2010 that Financial's liquidity position was such that it would require advances under the Operating Credit Facility in an aggregate amount that was greater than what was available to Financial under the margin terms contained in the April 2009 Term Sheet.

47. In March 2010, I had discussions with Mr. Royds regarding Bodkin's expected margin deficit position. I was informed by Mr. Royds that, to allow Bodkin to continue to operate, it required the following margin deficits in April 2010:

- (a) \$2.25 million for the week of April 5-9, 2010;
- (b) \$2.0 million for the week of April 12-16, 2010;
- (c) \$1.0 million for the week of April 19-23, 2010; and
- (d) \$500,000 for the week of April 26-30, 2010.

48. The Bank determined that, in order to allow Bodkin to continue to operate and write new leases while it sought a resolution to its financial difficulties, and notwithstanding the Original Covenant Breaches, it would permit Bodkin to maintain the margin deficits for April 2010 set out above, on the condition that Bodkin would: (i) begin to provide daily margin listings to the Bank, so as to ensure that the prescribed margin deficits were adhered to; (ii) extinguish the margin deficit by April 30, 2010; and (iii) retain a financial advisor to assist Bodkin in addressing its liquidity concerns and perform a review of Bodkin's short-term cash position, lease portfolio and monthly forecast for fiscal years 2010 and 2011.

49. Notwithstanding its agreement to extinguish the margin deficit by April 30, 2010, Bodkin continued to require margin deficits under the Operating Credit Facility to meet its obligations as they generally became due and to write new leases. In order to permit Bodkin to continue on in business and facilitate a sale of its business, as discussed in greater detail below, the Bank has permitted Bodkin to maintain margin deficits up to and including October 3, 2011, pursuant to various term sheets entered into between the Bank and Financial during that time period, including the September 20/11 Term Sheet. Attached hereto and marked as **Exhibit "N"** is a chart that sets out the Bodkin margin deficits from April 5, 2010 to October 3, 2011.

50. The existence of the margin deficits, and the Bank's willingness to provide additional credit to Bodkin from March 2010 to October 3, 2011 notwithstanding Bodkin being in default of its obligations to the Bank, significantly increased the Bank's exposure to potential loss under the Operating Credit Facility.

2. Changes to Sun Life Securitization Facility

51. As noted earlier in my affidavit, a Reserve Fund was established under the Sun Life securitization facility to provide collateral for any delinquencies in the leases that are assigned by Bodkin to Sun Life. The Contribution Threshold under the Reserve Fund was originally equal to 5% of the assignment price under the MPAA. However, the Contribution Threshold for Book 2 was subsequently increased to 6.75% under the Sun Life Term Sheet. Additionally, the Release Threshold under the Reserve Fund was increased from 7.5% to 8.0% for Book 1, and increased from 7.0% to 8.5% for Book 2, under the Sun Life Term Sheet. These changes adversely affected Bodkin's liquidity and were a significant contributor to the margin deficits that arose as detailed above.

III. FORBEARANCE AND SALES PROCESS

A. Forbearance

52. In June 2010, Bodkin requested that the Bank forbear from demanding repayment of Bodkin's obligations and enforcing upon its security, notwithstanding the Original Covenant Breaches, the defaults under the credit facilities and the liquidity issues facing Bodkin. The request for the forbearance was made at a time when Bodkin and its shareholders were engaged in discussions with potential purchasers under the informal sales process, described in greater detail below.

53. A letter agreement was entered into dated June 18, 2010 and signed by the Bank, Financial, Capital, Leasing and other parties (the "**Original Forbearance Agreement**"). Attached hereto and marked as **Exhibit "O"** is a redacted copy of the Original Forbearance Agreement. The name of the purchaser identified in the Original Forbearance Agreement has been redacted in the copy of the Original Forbearance Agreement attached as Exhibit "O" for confidentiality reasons.

54. As set out in the Original Forbearance Agreement, the Bank indicated its intention to forbear from demanding payment of the indebtedness owed by Bodkin and taking steps to enforce or otherwise realize upon its security until a date no later than August 31, 2010, subject to certain conditions. One of the conditions of the forbearance was that Financial would abide by any margin deficit that may be agreed to by the Bank. Additional conditions were with

respect to matters relating to a potential sale of the Bodkin business to a purchaser, as is discussed in greater detail below.

55. The Bank and Financial entered into an amendment to the Original Forbearance Agreement dated and accepted on August 20, 2010 (the "**First Amendment**"). Pursuant to the terms of the First Amendment, the Bank agreed to continue to forbear from enforcing its security and demanding its repayment to September 30, 2010, provided that Bodkin had retained PwC to undertake a sales process for the business of Bodkin and that a sale transaction was tendered for acceptance by Bodkin by September 30, 2010, with such date being subject to potential extension by the Bank. Attached hereto and marked as **Exhibit "P"** is a redacted copy of the First Amendment, as the name of the purchaser identified in the First Amendment has been redacted for confidentiality reasons.

56. By the end of September 2010, a sale transaction had not been completed for the business of Bodkin. However, at that time, Bodkin and PwC were in discussions with a few interested parties, and as a result, Bodkin proposed to extend the negotiation phase of the sales process to the middle of October 2010 in an ongoing effort to procure an offer to complete a sale transaction on terms acceptable to Bodkin and its secured stakeholders. The Bank decided that, in an effort to support and facilitate the completion of a sales transaction, it would continue to forbear from making a demand for repayment from Bodkin and taking steps to enforce its security to October 27, 2010 pursuant to the terms of a second amendment to the Original Forbearance Agreement dated September 29, 2010 and accepted on September 30, 2010 (the "**Second Amendment**"). Attached hereto and marked as **Exhibit "Q"** is a redacted copy of the Second Amendment, as the name of the purchaser identified in the Second Amendment has been redacted for confidentiality reasons.

57. Following the expiry of the forbearance period contained in the Second Amendment on October 27, 2010, the Bank was in a *de facto* day-to-day forbearance with respect to Bodkin, pending further developments in connection with the potential sale of Bodkin's business. Pursuant to the forbearance letter agreement dated January 25, 2011 and accepted by Financial on January 26, 2011 and acknowledged and agreed to by Capital and Leasing, among other parties (the "**Supplemental Forbearance Agreement**"), the Bank confirmed that it was

prepared to continue to forbear, on a day-to-day basis, and subject always to its right of demand at any time in its sole discretion, from demanding payment of Bodkin's indebtedness to the Bank and taking steps to enforce its security, provided that certain conditions were met. Attached hereto and marked as **Exhibit "R"** is a copy of the Supplemental Forbearance Agreement.

B. Sales Process

1. Informal Process

58. Beginning in the spring of 2009, Bodkin commenced an informal solicitation process in an attempt to locate a party that was prepared to re-finance Bodkin's indebtedness, provide an equity investment and/or purchase the Bodkin leasing business on a going concern basis. The information solicitation process consisted of Bodkin approaching certain competitors, prospective purchasers and financiers to assist in recapitalizing Bodkin's balance sheet.

59. From May 2009 to September 2010, Bodkin engaged in discussions with six parties. A number of these parties conducted due diligence and engaged in discussions with Bodkin. However, as of September 2010, Bodkin had not completed a transaction with any of the prospective purchasers/investors.

2. Formal Process

60. Bodkin retained the services of Deloitte & Touche LLP ("**Deloitte**") in April 2010 to act as its financial advisor. In May 2010, Deloitte's retainer was expanded to include assisting Bodkin in the completion of a formal sales process for the Bodkin business. To that end, Deloitte prepared a confidential information memorandum ("**CIM**") and a sales teaser and established a detailed data room in connection with the sales process to be conducted by Bodkin and Deloitte.

61. Bodkin subsequently retained PricewaterhouseCoopers Corporate Finance Inc. ("**PwC Corporate Finance**") on August 27, 2010 as its financial advisor to provide strategic advice and assist Bodkin with a formal solicitation process for a potential sale of assets or recapitalization of Bodkin, which included developing a market strategy, canvassing potential purchasers and investors, the preparation of a teaser, a CIM and non-disclosure agreements ("**NDAs**"), assisting with electronic data-rooms and due diligence requests, providing analysis with respect to any

letters of intent ("LOIs") received, and assisting in the negotiation and closing of any sale transaction.

62. Bodkin, in consultation with PwC Corporate Finance, determined that a recapitalization of the Bodkin business was likely not achievable, given the previous unsuccessful informal solicitation process conducted by Bodkin, and that an outright sale of the outstanding equity and/or assets of Bodkin would result in the greatest proceeds being realized for the benefit of Bodkin's stakeholders.

63. The proposed timeline for a potential transaction under the sales process was originally as follows:

- (a) submission of non-binding LOIs by September 28, 2010;
- (b) binding offers to be received by October 15, 2010; and
- (c) sale transaction to close by October 29, 2010.

64. PwC Corporate Finance, with the assistance of Bodkin, identified 59 potential buyers, of which 46 were strategic buyers and 13 were financial buyers. The potential buyers were contacted by PwC Corporate Finance beginning September 2, 2010 and each were asked to sign an NDA in connection with receiving a copy of the CIM.

65. A total of 15 parties executed NDAs and received the CIM, with 11 of such parties being strategic buyers and 4 such parties being financial buyers. Of the 15 parties that signed an NDA and obtained a copy of the CIM, only 2 strategic buyers elected to conduct further due diligence or attend for a site visit, one of which was a prospective purchaser, a lease financing company, which had begun discussions with Bodkin in 2009 ("**Proposed Purchaser #1**"), and the other prospective purchaser was another leasing company ("**Prospective Purchaser #2**").

66. Bodkin received an LOI from Prospective Purchaser #2 on September 28, 2010. The LOI of Prospective Purchaser #2 provided for an asset purchase of the portfolio of leases securitized with Sun Life, the leases funded under the Bank's term credit facilities and the leases owned by Bodkin. The proposed purchase was to be at a discount rate that was subject to adjustments based on the results of due diligence.

67. Following discussions with its stakeholders, Bodkin determined that the terms of the LOI submitted by Prospective Purchaser #2 were not acceptable, due to the potential shortfall to be faced by Bodkin and its stakeholders under the terms of the LOI. I have been informed by Mr. Royds that Sun Life was not prepared to sell its securitization lease facility to Prospective Purchaser #2 for various reasons. BMO was not prepared to agree to a sale of the lease portfolios financed by the Bank at the discounted price suggested by Prospective Purchaser #2, as the proposed sale would have resulted in the Bank suffering a substantial loss with respect to its secured credit facilities.

68. With respect to Prospective Purchaser #1, it expressed an interest in completing a Bodkin share purchase throughout 2010. Prospective Purchaser #1 and Financial's shareholders eventually entered into an LOI dated November 2, 2010 that provided for a period of exclusivity to Prospective Purchaser #1 for the purposes of completing due diligence. However, on December 10, 2010, Financial was informed by Prospective Purchaser #1 that it was no longer interested in acquiring the shares of Financial, but was interested in purchasing certain Bodkin assets and submitted an LOI for the purchase of such assets.

69. Following discussions with its stakeholders, Bodkin determined that the terms of the proposed asset transaction submitted by Prospective Purchaser #1 were not acceptable, due to the potential shortfall to be faced by Bodkin and its stakeholders thereunder. The Bank, for its part, was unwilling to agree to the proposed transaction with Prospective Purchaser #1 for similar reasons.

3. Equirex Transaction

70. Shortly after Bodkin's rejection of the LOI of Prospective Purchaser #1 in December 2010, Bodkin entered into discussions with another potential purchaser, Equirex Leasing Corp. ("Equirex"), for the purchase of the shares of Financial.

71. Since December 2010, representatives of the Bank have engaged in discussions with representatives of PwC, PwC Corporate Finance, Bodkin, Equirex and Sun Life regarding a potential sale transaction of the Bodkin business to Equirex. As a result of the extensive discussions and negotiations between the parties, the terms of an asset purchase and security agreement 1 between the Receiver and Sun Life with respect to the acquisition by Sun Life of

lease receivables associated with leases financed by the BMO Credit Facilities (the "APSA"), an offer to purchase between the Receiver, 7834209 Canada Inc. ("783") and 7762895 Canada Inc. ("776"), affiliates of Equirex (the "Offer"), a reserve sharing agreement between the Receiver and 783 (the "RSA"), a transition agreement between the Receiver and 776 (the "Transition Agreement"), and an administration agreement between Sun Life, 783, and the Receiver (the "Administration Agreement"), have been settled and agreed to by the parties thereto (collective, the "Transaction Documents"), each of which are subject to the approval of this Court.

72. I understand that PwC, in its capacity as proposed Receiver of Bodkin, will submit a report to the Court (the "Proposed Receiver Report"), which will be before the Court in connection with Bank's application for the appointment of a Receiver and will include: (i) a detailed description of the Transaction Documents and copies of such documents as appendices to the Proposed Receiver Report; and (ii) PwC's view that the Equirex transaction is reasonable in the circumstances, as it preserves the core business of Bodkin, facilitates the continued employment of a number of Bodkin employees, and provides for the greatest possible realization for the benefit of all of Bodkin stakeholders.

73. The Bank is supportive of the consummation of the sale of Bodkin's business pursuant to the terms of the Transaction Documents, as the transaction should, if the lease portfolios are wound down in a commercially reasonable manner, provide for sufficient proceeds to repay the Bank under the BMO Credit Facilities in full and have surplus proceeds available for distribution to the subordinate creditors of Bodkin, and potentially the shareholders of Bodkin.

74. In connection with the proposed Equirex transaction and the pending receivership application, on September 2, 2011, the Bank, through its legal counsel, delivered notices of the Bank's intention to enforce its security (the "Notices") to each of the Respondents pursuant to section 244 of the BIA. Attached hereto and marked as **Exhibit "S"** are copies of the e-mail dated September 2, 2011 from counsel to the Bank to counsel to the Respondents, the Notices, and the responding e-mail from counsel to the Respondents confirming receipt of the documents. Additionally, on October 3, 2011, the Bank, through its counsel, demanded repayment from Financial of its obligations under the BMO Credit Facilities, and demanded repayment from each

of Capital and Leasing under the Guarantees. Attached hereto as **Exhibit "T"** are copies of a of the e-mail dated October 3, 2011 from counsel to the Bank to counsel to the Respondents, a demand letter from the Bank to Financial dated October 3, 2011 and a demand letter to each of Capital and Leasing dated October 3, 2011.

75. As noted in the Proposed Receiver Report, PwC, in its capacity as proposed Receiver, has obtained an opinion from independent counsel that, subject to typical assumptions and qualifications, the Bank has a perfected security interest in all of the property, assets and undertaking of Bodkin. As a result, the Bank is requesting that, if a Receiver is appointed with respect to Bodkin, the Receiver be directed to distribute any funds its receives on account of the purchase price payable by the Purchaser on the closing of the Offer, the purchase price payable by Sun Life on the closing of the APSA and from any other source, including without limitation any tax refunds payable to Bodkin and any moneys in the Reserve Fund which are released to Bodkin pursuant to the RSA and/or the Administration Agreement, subject to the retention by the Receiver of a reasonable reserve in respect of its own fees and disbursements and the resolution of any priority issue in respect of any security interest or hypothec in any specific personal or movable property claimed by any other creditor registered under any PPSA or the RPMRR.

76. In the event that the Bank's receivership application is granted and the Court approves the Equirex sale transaction, Bodkin will, following the completion of the sale transaction: (i) have no remaining assets, other than certain rights to tax refunds, and its right to payment of its share of the Reserve Fund; (ii) have no employees and no business to carry on; and (iii) have leased real property premises that will need to be disclaimed or potentially assigned to a third party.

77. Following the completion of the sale to Equirex, it is the Bank's view that a bankruptcy of Bodkin is appropriate to, among other things, establish a mechanism to evaluate claims of parties against Bodkin and to deal with the leased premises. In connection thereto, the Bank had issued applications for bankruptcy orders against Financial, Capital and Leasing on October 3, 2011. In its receivership application, the Bank is requesting that the stay of proceedings under the receivership order not apply to the bankruptcy applications, and that the Receiver be authorized to agree to the issuance of bankruptcy orders on behalf of Bodkin following the closing of the Equirex transaction.

78. BMO proposes that PwC be appointed as Receiver, as PwC is best positioned to take on that role given its understanding of Bodkin's business. PwC has agreed to act as Receiver if so appointed by the Court. Attached hereto and marked as **Exhibit "U"** is a copy of PwC's Consent to act as Receiver dated October 3, 2011.

IV. NECESSITY OF APPOINTMENT OF A RECEIVER AND TRUSTEE

79. Financial is in default under the Bank's credit facilities due to the Covenant Breaches, and is in default under the Sun Life securitization facility. The Bank refrained from demanding repayment of the BMO Credit Facilities, permitted the existence of margin deficits and overadvanced funds to Bodkin for a 20-month period of time in an effort to facilitate a going concern sale of Bodkin's business. Bodkin is in the process of finalizing a proposed sale transaction with Equirex, with the consent of its two primary secured stakeholders, the Bank and Sun Life, the completion of which is conditional upon the Transaction Documents, once finalized, being approved and the purchased assets being vested in the Purchaser by order of the Court.

80. Bodkin has been in a liquidity crisis since March 2010 and the Bank is unaware of any sources of liquidity available to Bodkin to permit Bodkin to meet its working capital obligations as they come due and continue to operate in the ordinary course of business. The Sun Life securitization facility under the Sun Life Term Sheet expired on January 31, 2011 and Sun Life has made no commitment to continue with the securitization facility in the future should the sale to the Purchaser not be completed in accordance with its terms. The Bank is unwilling to continue to finance the acquisition of additional new and used equipment and vehicles for lease to Bodkin's customers through advances under the Operating Credit Facility in the current circumstances, including in the absence of a commitment on the part of Sun Life to purchase such leases under its securitization facility. Accordingly, in the absence of funding by Sun Life and hence the Bank, Bodkin is unable to continue to carry on its business.

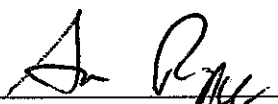
81. The appointment of a Receiver to complete the proposed Equirex sale transaction that is being negotiated is in the best interest of all of Bodkin's stakeholders, as, if completed, it will allow for the going concern sale of the Bodkin business to Equirex, which will provide continued employment to the majority of Bodkin's current employees, and will allow for the administration

and management of the net proceeds of the Reserve Fund by an officer of the Court. As noted above, under the terms of the proposed Equirex sale transaction, the funds to be received by the Receiver from the Reserve Fund may result in the BMO Credit Facilities being satisfied in full and funds being available to be distributed to the other stakeholders of Bodkin by the Receiver or any trustee in bankruptcy, in accordance with the appropriate and applicable priority scheme.

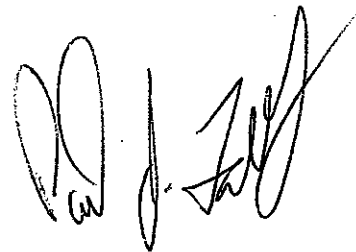
82. It is the Bank's view that, in the absence of the completion of the Equirex transaction, there would be a disruption in the Bodkin business which would adversely affect the marketability and value of Bodkin's business, jeopardize the collectability of the receivables under the assigned lease portfolios and negatively impact the ability of Bodkin's stakeholders to be repaid in full from funds available to be distributed to the stakeholders of Bodkin from the Reserve Fund.

83. This affidavit is sworn in support of BMO's application for the appointment of a Receiver and the completion of the sale of Bodkin's business to Equirex and for no other or improper purpose.

SWORN BEFORE ME in the City of)
Toronto, in the Province of Ontario)
this 3rd day of October, 2011)



SAM PHILIP RAPPOS
A Commissioner for Taking Affidavits



PAUL JAMES FINDLAY

BANK OF MONTREAL

- and -

BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

AFFIDAVIT OF
PAUL JAMES FINDLAY
(sworn October 3, 2011)

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario M5H 3Y4

SAM P. RAPPOS
Tel: 416-367-6033
Fax: 416-361-7306
LSUC#: 51399S

H. ALEXANDER ZIMMERMAN
Tel: 416-367-6003
Fax: 416-361-2520
LSUC#: 17663W

Solicitors for the Applicant

TAB A

**THIS IS EXHIBIT "A" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Request ID: 013498304
Transaction ID: 45319938
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/09/07
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Page: 1

CORPORATION DOCUMENT LIST

Ontario Corporation Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

ACT/CODE	DESCRIPTION	FORM	DATE (YY/MM/DD)
BCA	ARTICLES OF AMENDMENT	3	2007/12/07
CIA	INITIAL RETURN	1	2006/02/03
	PAF: BODKIN, DONALD		
BCA	ARTICLES OF AMALGAMATION	4	2005/12/15

THIS REPORT SETS OUT ALL DOCUMENTS FOR THE ABOVE CORPORATION WHICH HAVE BEEN FILED ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

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Category ID: UNE

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Ministry of Government Services

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Time Report Produced: 14:15:23
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date
1682322	BODKIN FINANCIAL CORPORATION	2005/12/15
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
DONALD BODKIN 2150 DUNWIN DRIVE	NOT APPLICABLE	A
Suite # 1 MISSISSAUGA ONTARIO CANADA L5L 5M8	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
Mailing Address		Letter Date
DONALD BODKIN 2150 DUNWIN DRIVE		NOT APPLICABLE
Suite # 1 MISSISSAUGA ONTARIO CANADA L5L 5M8	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
	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: 013498303
Transaction ID: 45319937
Category ID: UNE

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Ministry of Government Services

Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

Corporate Name History

BODKIN FINANCIAL CORPORATION

Effective Date

2005/12/15

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Amalgamating Corporations

Corporation Name

BODKIN FINANCIAL CORPORATION

551520 ONTARIO LIMITED

Corporate Number

1312332

551520

Request ID: 013498303
Transaction ID: 45319937
Category ID: UNE

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Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

DONALD

BODKIN

Address

1438 CLARKSON ROAD NORTH

MISSISSAUGA
ONTARIO
CANADA L5J 2W5

Date Began

2005/12/15

First Director

YES

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:
Name (Individual / Corporation)

DONALD

L
BODKIN

Address

1438 CLARKSON ROAD NORTH

MISSISSAUGA
ONTARIO
CANADA L5J 2W5

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 013498303
Transaction ID: 45319937
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Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

CHARLES
EDWARD
DANIELSON

Address

1910 YONGE STREET

Suite # 1510
TORONTO
ONTARIO
CANADA M4S 1Z4

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:
Name (Individual / Corporation)

JOHN
MITCHELL

Address

2150 DUNWIN STREET
UNIT 1

MISSISSAUGA
ONTARIO
CANADA L5L 1C7

Date Began

2005/12/15

First Director

YES

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

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Transaction ID: 45319937
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Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1682322

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

Address

JOHN
D
MITCHELL

1368 MERRYBROOK LANE

OAKVILLE
ONTARIO
CANADA L6M 1T

Date Began

First Director

2005/12/15

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:
Name (Individual / Corporation)

Address

JOHN
D
MITCHELL

1368 MERRYBROOK LANE

OAKVILLE
ONTARIO
CANADA L6M 1T

Date Began

First Director

2005/12/15

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

CHIEF FINANCIAL OFFICER Y

Request ID: 013498303
Transaction ID: 45319937
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

WILLIAM
PATTON

Address

1710 PADDOCK CRESCENT

MISSISSAUGA
ONTARIO
CANADA L5L 3E4

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator:
Name (Individual / Corporation)

WILLIAM
PATTON

Address

1710 PADDOCK CRESCENT

MISSISSAUGA
ONTARIO
CANADA L5L 3E4

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

OTHER

Resident Canadian

Y

Request ID: 013498303
Transaction ID: 45319937
Category ID: UN/E

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Ministry of Government Services

Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 7

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1682322

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

Address

PAUL
H
ROYDS

7 BAKER AVENUE

TORONTO
ONTARIO
CANADA M4V 2A9

Date Began

First Director

2005/12/15

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:
Name (Individual / Corporation)

Address

PAUL
H
ROYDS

7 BAKER AVENUE

TORONTO
ONTARIO
CANADA M4V 2A9

Date Began

First Director

2005/12/15

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

PRESIDENT

Y

Request ID: 013498303
Transaction ID: 45319937
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 8

CORPORATION PROFILE REPORT

Ontario Corp Number

1682322

Corporation Name

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

PAUL
H
ROYDS

Address

7 BAKER AVENUE

TORONTO
ONTARIO
CANADA M4V 2A9

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF EXECUTIVE OFFICER Y

Resident Canadian

Administrator:
Name (Individual / Corporation)

RAJAKUMAR
SINGH

Address

549 RENSCHAW COURT

MISSISSAUGA
ONTARIO
CANADA L5H 4L6

Date Began

2005/12/15

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

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Transaction ID: 45319937
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 9

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1682322

BODKIN FINANCIAL CORPORATION

Administrator:
Name (Individual / Corporation)

Address

RAJAKUMAR
SINGH

549 RENSHAW COURT

MISSISSAUGA
ONTARIO
CANADA L5H 4L6

Date Began

First Director

2005/12/15

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

OTHER

Y

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Date Report Produced: 2011/09/07
Time Report Produced: 14:15:23
Page: 10

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1682322

BODKIN FINANCIAL CORPORATION

Last Document Recorded

Act/Code	Description	Form	Date
BCA	ARTICLES OF AMENDMENT	3	2007/12/07

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PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

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Federal Corporation Information

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Corporation Number

3267911

Business Number (BN)

891031635RC0001

Governing Legislation

Canada Business Corporations Act - 1996-06-10

Corporate Name

BODKIN CAPITAL CORPORATION

Status

Active

Registered Office Address

2150 DUNWIN DR
UNIT 1
MISSISSAUGA ON L5L 1C7
Canada

Active CBCA corporations are required to [update this information](#) within 15 days of any change.

Directors

Minimum	Maximum
1	10

Directors

JOHN D. MITCHELL
WILLIAM PATTON
PAUL ROYDS
RAJKUMAR SINGH
CHARLES DANIELSON

Email or fax [Corporations Canada](#) to obtain addresses of directors.

Active CBCA corporations are required to [update this information](#) within 15 days of any change.

Annual Filings

Anniversary Date (MM-DD)
06-10

Date of Last Annual Meeting
2009-01-07

Annual Filing Period (MM-DD)
06-10 to 08-09

Type of Corporation
Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2011 - Filed
2010 - Filed
2009 - Filed

Corporate History**Corporate Name History**

1996-06-10 to Present

BODKIN CAPITAL CORPORATION

Certificates Issued**Certificate of Incorporation**

1996-06-10

Date Modified: 2011-08-17

Industry
CanadaIndustrie
Canada

Canada

Industry Canada > Business Tools and Resources > Corporations Canada > Online Filing Centre

Corporations Canada

Federal Corporation Information[Glossary of Terms used on this page](#)[Return to Search Results](#)[Start New Search](#)**Corporation Number**

326551

Business Number (BN)

101444610RC0001

Governing Legislation

Canada Business Corporations Act - 1979-01-08

Corporate Name

BODKIN LEASING CORPORATION

Status

Active

Registered Office Address2150 DUNWIN DRIVE
UNITS 1&2
MISSISSAUGA ON L5L 1C7
CanadaActive CBCA corporations are required to [update this information](#) within 15 days of any change.**Directors****Minimum**

1

Maximum

5

DirectorsJOHN D. MITCHELL
WILLIAM PATTON
PAUL ROYDS
RAJKUMAR SINGH
CHARLES DANIELSONEmail or fax [Corporations Canada](#) to obtain addresses of directors.Active CBCA corporations are required to [update this information](#) within 15 days of any change.**Annual Filings****Anniversary Date (MM-DD)**

01-08

Date of Last Annual Meeting

2009-01-07

Annual Filing Period (MM-DD)

01-08 to 03-09

Type of Corporation

Non-distributing corporation with 50 or fewer shareholders

Status of Annual Filings

2011 - Filed

2010 - Filed

2009 - Filed

Corporate History**Corporate Name History**

1950-04-18 to 1962-04-10

DEL BODKINS MOTORS LTD.

1962-04-10 to 1973-10-15

DEL BODKIN LEASING LIMITED

1973-10-15 to 1996-08-23

DON BODKIN LEASING LIMITED

1996-08-23 to Present

BODKIN LEASING CORPORATION

Certificates Issued**Certificate of Continuance**

1979-01-08

Certificate of Amendment [±]

2003-08-29

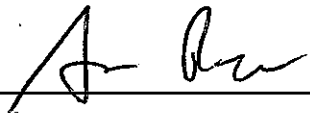
Amendment details: Other

* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. Contact Corporations Canada for more information.

Date Modified: 2011-08-17

TAB B

**THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read 'A. Rappos', is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

TERM SHEET**BORROWER**

Bodkin Financial Corporation

LENDER

BMO Bank of Montreal ("Lender" or "Bank" or "BMO")

FACILITY 1**OPERATING CREDIT****Amount****\$10,000,000 effective September 20, 2011, \$9,000,000 effective September 26, 2011 to October 3, 2011.****Purpose**

To assist with daily business operations.

Availment

On demand by way of overdraft &/or Foreign Exchange Forward Contracts (FEFC) (10% risk content) as per terms and conditions under Operating Loan Agreement. FEFC availability is capped at \$500,000 (CAD), with one year maximum term. Availment for equipment is to be capped at **\$4,500,000** at any one point in time.

Margin Requirements

Subject to the terms of Margin Deficit below, advances, including FEFC risk content, are to be contained at all times within the aggregate of the undernoted company assets, which are to be free and clear of any other encumbrances:

- (a) 100% of new and used vehicles (including medium duty trucks and heavy duty trucks and trailers) and equipment pending funding of the respective lease by a third party and ultimate securitization. To be outstanding under this line for no longer than 90 days.
- (b) 70% of the acquisition cost of used vehicles up to 90 days, with no value given to units over 90 days. Maximum availability \$750,000.
- (c) 75% of the Bank's estimated worth of good quality customer accounts receivable less than or equal to 60 days past due, Excluding items in dispute, amounts due by Directors, Officers, employees of Borrower or any Affiliates and others who do not deal at arms' length with Borrower, intercompany accounts, contra accounts, accounts subject to offset, accounts owed by creditor or supplier and Insolvent account debtor.

Margin Deficit

Subject to Bank approval, the Borrower is allowed a pre-defined margin deficit. Specifically, this is an advance amount in excess of the daily margin valuation calculated under "Margin Requirements" above. Such margin deficit will typically be established for a four week period and will be based on the 13 week cash flow developed in conjunction with Deloitte & Touche LLP ("Deloitte") or an advisor acceptable to the Bank, as part of Deloitte's or other advisor's engagement with the Borrower.

The maximum margin deficit for the two week period ending October 3, 2011 is as follows:

Tuesday September 20 - Monday September 26: \$1,950,000
Tuesday September 27 - Monday October 3: \$2,250,000

Future margin deficits will be subject to interim credit application and Bank approval.

Repayment

On demand, but prior to demand, from advances under Facility 2, vehicle and equipment securitization, and normal business receipts.

Interest Rate

Bank of Montreal Prime + 2.75%, floating, payable monthly in arrears.

FCMA Fee

\$500.00 per month.

Administration Fee

In addition to the FCMA Fee, a monthly administration fee of \$1,500 is to apply.

FACILITY 2**WHOLESALE LEASING CREDIT****Amount**

\$3,344,497.94*

* Outstanding Balance September 20, 2011

Purpose

To finance the leasing of new and used vehicle leases. To include leases in favour of an Affiliate of the Borrower up to a maximum of 30 vehicles, **Fully Drawn**.

Terms

Existing leases shall be dealt with in accordance with the terms herein (it being agreed the Bank will not finance any new leases).

Facility Limit

Facility is fully drawn. The limit is equal to the reducing loan balance.

Loan Limits**NEW VEHICLES**

The Bank will finance 100% of the acquisition cost (including any value added package) of new vehicles (excluding GST) less advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

USED VEHICLES

The Bank will finance the lesser of: (i) 100% of the acquisition cost (including any value added package), plus \$600 administration cost, of used vehicles (excluding GST), less advance rentals, cash downpayments and trade-in allowances or (ii) current Black Book "clean value", plus \$600 administration cost, less advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice" Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****NEW and USED VEHICLES****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 2.75% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal Prime + 2.50%, floating, payable monthly in arrears

&/or

(B) Canadian Dollar Offering Rate (CDOR) + 400 basis points.

To be set at the beginning of the month and remain in place for one month.

*(As used herein, "CDOR rate" is equal to the average of Schedule 1 Banks' one month Bankers Acceptance offering rates as at 10 am Toronto time on the last business day of the month)***USED VEHICLES**

Total advances for used vehicle financing not to exceed 30% of the amount drawn under the Wholesale Leasing Credit.

Terms

Lease terms are available as follows:

New vehicles: -up to 60 months.Vehicles that are one model year old, with under 30,000 kilometres, are to be considered new up to June 30th of the current year.Used vehicles:

- Term of the lease plus model age of vehicle up to 84 months.
- Current & up to three model years old
- Model year is deemed to be the same as the calendar year

Extensions:

Available for units originally leased as new provided the original lease term plus extension does not exceed 72 months and amount financed cannot exceed the remaining principal owing on the lease ("Bank Balloon Balance"). Upon notification from the Borrower (and prior to lease maturity), leases may be extended for a maximum of 3 months without further documentation.

Re-Leases:

In the event of a lease default, and the Borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the vehicle to another lessee, creating a new lease, the amount is not to exceed the outstanding loan balance less any additional advance rentals, cash down payments and trade-in allowances.

Interest rate on a re-lease must be current rate. However in the case of a lease default, a lease term applicable to new vehicles may apply if the vehicle has less than 30,000 Kms, otherwise a lease term applicable to used vehicles will apply.

Assumptions:New Lessee must assume all terms of the original lease**Types of Leases**

Restricted to open end leases.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Limitation

Leases removed from a securitization are not eligible for financing under this facility.

Repayment

On demand, but prior to demand:

- From monthly lease revenue and/or sale of off-lease vehicles.
- Loans must be fully paid out within 30 days of lease termination or when vehicle sold, whichever occurs first, unless extended for 3 months as provided for above.

- Loans must be fully paid out on vehicles reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; payout to be the earlier of receipt of insurance proceeds or 60 days.
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(i) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN END LEASES	
Terms (Mos.)	Payback
1 to 23	2.00% princ.
24 to 35	1.75% princ.
36 to 60	1.50% princ.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades as a % of Vehicle Cost	5% - 9%	10% - 14%	Over 14%
TERM (Months) Open			
1 - 23	2.00%	1.75%	1.50%
24 - 35	1.75%	1.50%	1.25%
36 - 60	1.50%	1.25%	1.00%

In no case will the Bank Balloon Balance exceed the projected residual value of the vehicle at lease termination.

Principal repayments under lease extensions are to reflect the repayment schedule herein.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance under any fixed rate lease is applicable to any prepayment in full of the amount due in respect of each lease, except in the following exceptional circumstances:

- the related lease is terminated by mutual consent of the Lessor and the Lessee,
- the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- the financed vehicle is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,

- iv. the financed vehicle has been used in daily rental service for at least twelve months, or
- v. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection

(fixed rate advances only)

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- Application in writing is required from lessor prior to the next weekly rate change.
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of application.

The interest rate on the 3 month lease extensions (as provided for above) will be the loan rate of the original lease; the interest rate on all other lease extensions will be the then current rate.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).

Note:

Lessor's lease file must contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

- Proof of ownership (copy of vehicle registration).
- Delivery Receipt signed by Lessee.
- Copy of evidence of lessee coverage for fire, theft and comprehensive in an amount no less than the actual cash value. Public liability, property damage and bodily injury of not less than \$1,000,000. Collision or comprehensive deductible not to exceed \$5,000.

General Conditions - Applicable to Facility # 2

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting of vehicles by the lessee is permitted.

3. No broker lease financing paper is permitted. All leases to be in the name of a BFC Group company, as lessor.
4. Lease advances in respect of vehicles situated outside of the Province of Ontario will not exceed 40% of outstanding lease advances under the Wholesale Leasing Credit. Leases in respect of vehicles situated outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 10 leases in any one Lessee or group of affiliated Lessees without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with Lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification, whether conducted by Borrower's auditor or the Bank's auditor, shall be for the account of the Borrower.

Audits

Subject to surprise audits, which the Bank may initiate or undertake at any time in its sole discretion, not less frequently than quarterly.

FACILITY 3**HEAVY DUTY TRUCK AND TRAILER LEASING CREDIT****Amount****\$2,835,752.64****** Outstanding Balance September 20, 2011****Purpose**

To finance the leasing of new and used heavy duty trucks and trailers (individually and collectively herein described as "unit"). Advances related to used trucks and trailers including re-leases, but excluding extensions and assumptions (which were originally leased as new trucks and trailers), are not to exceed \$1,500,000 (25% of the Facility 3 limit). All trucks and trailers are to be standard on-road vehicles. **Fully Drawn.**

Terms

Existing leases shall be dealt with in accordance with the terms herein (it being agreed the Bank will not finance any new leases).

Facility Limit

Facility is fully drawn. The limit is equal to the reducing loan balance.

Loan Limits**NEW UNITS**

The Bank will finance 90% of the acquisition cost (including any value added package) of new units (excluding GST) inclusive of cash downpayments and advance payments. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

USED UNITS

The Bank will finance 90% of the acquisition cost (including any value added package), plus \$600 administration cost, of used units (excluding GST) inclusive of cash downpayments and advance payments. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****NEW and USED UNITS****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 3.25% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal Prime + 3.00%, floating, payable monthly in arrears
8/or

(C) Canadian Dollar Offering Rate (CDOR) + 450 basis points.

To be set at the beginning of the month and remain in place for one month.

Terms

Lease terms are available as follows:

New Units: -up to 60 months.

Units that are one model year old, with under 30,000 kilometres, are to be considered new up to June 30th of the current year.

Used units:

- Term of the lease plus model age of unit up to 84 months.
- Current & up to three model years old
- Model year is deemed to be the same as the calendar year

Extensions:

Available for units originally leased as new provided the original lease term plus extension does not exceed 72 months and amount financed cannot exceed the Bank Balloon Balance. Upon notification from the Borrower (and prior to lease maturity), leases may be extended for a maximum of 3 months without further documentation.

Re-Leases:

In the event of a lease default, and the Borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the unit to another lessee, creating a new lease, the amount is not to exceed the outstanding loan balance less any additional advance rentals, cash down payments and trade-in allowances.

Interest rate on a re-lease must be current rate. However in the case of a lease default, a lease term applicable to new vehicles may apply if the vehicle has less than 30,000 Kms, otherwise a lease term applicable to used vehicles will apply.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Limitation

Leases removed from a securitization are not eligible for financing under this facility.

Repayment

On demand, but prior to demand:

- From monthly lease revenue and/or sale of off-lease vehicles.
- Loans must be fully paid out within 30 days of lease termination or when unit sold, whichever occurs first, unless extended for 3 months as provided for above.

- Loans must be fully paid out on units reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; payout to be the earlier of receipt of insurance proceeds or 60 days.
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(i) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN END LEASES	
Terms (Mos.)	Payback
1 to 23	2.50% princ.
24 to 35	2.25% princ.
36 to 48	2.00% princ.
49 to 60	1.75% princ.

In no case will the Bank Balloon Balance exceed the projected residual value of the unit at lease termination.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades As a % of Vehicle Cost	0% - 9%	Over 10%
TERM (Months) Open		
1 - 23	2.50%	2.25%
24 - 35	2.25%	2.00%
36 - 48	2.00%	1.88%
49 - 60	1.75%	1.75%

In no case will the Bank Balloon Balance exceed the projected residual value of the vehicle at lease termination.

Principal repayment under lease extensions are to reflect the repayment schedule herein.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance under any fixed rate lease is applicable to any prepayment in full of the amount due in respect of each lease, except in the following exceptional circumstances:

- the related lease is terminated by mutual consent of the Lessor and the Lessee,

- ii. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- iii. the financed unit is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- iv. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection**(fixed rate advances only)**

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- Application in writing is required from lessor prior to the next weekly rate change.
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of application.

The interest rate on the 3 month lease extensions (as provided for above) will be the loan rate of the original lease; the interest rate on all other lease extensions will be the then current rate.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).
- Minimum summary tax return information for sole proprietorships and financial statement for corporations for lease transactions of \$50,000 or more.

Note:

Lessor's lease file must contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

- Proof of ownership (copy of truck registration).
- Delivery Receipt signed by Lessee.
- Copy of evidence of lessee coverage for fire, theft and comprehensive in an amount no less than the actual cash value. Public liability, property damage and bodily injury of not less than \$2,000,000 for trucks and \$1,000,000 for trailers. Collision or comprehensive deductible not to exceed 10% of the capital cost of the unit, capped at \$25,000.

General Conditions - Applicable to Facility # 3

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting of vehicles by the lessee is permitted.
3. No broker lease financing paper is permitted. All leases to be in the name of a BFC Group company, as lessor.
4. Leases in respect of a unit outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 3 leases in any one Lessee or group of affiliated Lessees without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification, whether conducted by Borrower's auditor or the Bank's auditor, shall be for the account of the Borrower.

Audits Subject to surprise audits, which the Bank may initiate or undertake at any time in its sole discretion, not less frequently than quarterly.

FACILITY 4**NEW EQUIPMENT LEASING CREDIT****Amount****\$860,927.86****** Outstanding Balance September 20, 2011****Purpose**

To finance the leasing of new equipment in the following categories:

1. New manufacturing and processing equipment
2. New packaging and materials handling equipment
3. New wood and metal working equipment
4. New construction equipment and
5. New agricultural equipment

Terms**Existing leases shall be dealt with in accordance with the terms herein (it being agreed the Bank will not finance any new leases).****Facility Limit****Facility is fully drawn. The limit is equal to the reducing loan balance.****Loan Limits****NEW UNITS****The Bank will finance 85% of the acquisition cost of new equipment (excluding GST) inclusive of cash downpayments and advance payments. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination. Fully Drawn.****Interest Rates****(FIXED)****Up to and including 48 month term:****Bank of Montreal Cost of Funds + 3.25% fixed for term chosen (1 to 5 4 years).**

(FLOATING)

(A) Bank of Montreal Prime + 3.00%, floating, payable monthly in arrears
 &/or

(D) Canadian Dollar Offering Rate (CDOR) + 450 basis points.

To be set at the beginning of the month and remain in place for one month.

Terms

Lease terms are available up to 48 months.

Re-Leases:

In the event of a lease default, and the Borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the unit to another lessee, creating a new lease, the amount is not to exceed the outstanding loan balance less cash down payments.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Limitation

Leases removed from a securitization are not eligible for financing under this facility.

Repayment

On demand, but prior to demand:

- From monthly lease revenue and/or sale of equipment.
- Loans must be fully paid out within 30 days of lease termination or when unit sold, whichever occurs first.
- Loans must be fully paid out on units reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; payout to be the earlier of receipt of insurance proceeds or 60 days.
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(I) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN END LEASES	
Terms (Mos.)	Payback
1 to 23	2.50% princ.
24 to 35	2.25% princ.
36 to 48	2.00% princ.

In no case will the Bank Balloon Balance exceed the projected residual value of the unit at lease termination.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades as a % of Vehicle Cost	0% - 9%	Over 10%
TERM (Months) Open		
1 - 23	2.50%	2.25%
24 - 35	2.25%	2.00%
36 - 48	2.00%	1.88%

In no case will the Bank Balloon Balance exceed the projected residual value of the unit at lease termination.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance is applicable to any prepaid amounts on fixed rate leases, except in the following exceptional circumstances:

- i. the related lease is terminated by mutual consent of the Lessor and the Lessee,
- ii. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- iii. the financed unit is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- iv. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection**(fixed rate advances only)**

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- Application in writing is required from lessor prior to the next weekly rate change.
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of application.

Interest rate on a re-lease must be current rate.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).

- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).
- Minimum summary tax return information for sole proprietorships and financial statement for corporations for lease transactions of \$50,000 or more.
- Proof of comprehensive insurance coverage

Note:

Lessor's lease file should contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

General Conditions - Applicable to Facility # 4

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting by the Lessee is permitted.
3. No broker lease financing paper is permitted. All leases to be in the name of a BFC Group company, as lessor.
4. Leases in respect of equipment situated outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 3 leases in any one company or individual without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification, whether conducted by Borrower's auditor or the Bank's auditor, shall be for the account of the Borrower.

Audits Subject to surprise audits, which the Bank may initiate or undertake at any time in its sole discretion, not less frequently than quarterly.

Fees (applicable to Facilities 1 to 4, inclusive)

The Borrower will be responsible for payment of the following fees:

- All costs including legal fees and out of pocket expenses incurred for the preparing and obtaining of security and documentation.
- \$25.00 administration fee per lease booked, plus out of pocket expenses are to be recovered from the lessor. e.g. bank reports \$12.
- \$25.00 administration fee per lease booked with rate protection is to be recovered from the lessor.
- Minimum \$1,000.00 per annum to cover the cost of lease portfolio audits.
- Reporting fees as a result of deviations from the terms and conditions set out herein. e.g. \$100 for each Exception Request, encompassing all lease facilities \$1,500 for Interim Credit Applications of any kind excluding lease facility exceptions.

FACILITY 5**CORPORATE MASTERCARD****Amount****\$5,000****Terms**

Subject to Standard BMO MasterCard Agreements and related documentation to be entered into by the Borrower.

GENERAL**Reporting**

The following reports are required to assist the Bank in monitoring the value of security and financial trends:

Monthly

By the 30th day after each month end, a copy of the following reports signed by an authorized signing officer of the Borrower is to be submitted to the Bank:

- Internally prepared consolidated financial statements for Bodkin Financial Corporation.
- A summary of delinquencies under each of Facilities 2-4, inclusive.
- A copy of the reporting package sent to Sun Life ("Sun Life") Assurance Company of Canada. To include, but not be limited to, delinquency analysis of Book 1 and Book 2 of the Sun Life Securitization Facility, as well as details on the lock up triggers (delinquency and loss) regarding the reserves with respect to Book 1 and Book 2.
- A summary of funding availability under the Sun Life Securitization Facility.
- A summary of leases in the pipeline (i.e. leases that have yet to be funded, but are expected to be funded at a future date).

In support of the Wholesale Leasing Credit, the Heavy Duty Truck and Trailer Leasing Credit and the New Equipment Leasing Credit

- Monthly aged listing (in summary form) of past due lease receivables. The status of those lease contracts over 60 days past due is to be outlined along with the corrective action contemplated if allowance for doubtful accounts has not been provided.

Daily

In support of the Operating Credit as well as to measure the Margin Deficit

- A listing of new and used equipment purchased pending funding of the respective lease by a third party and ultimate securitization. A listing of lessees, cost and date acquired are to be provided. In lieu of the foregoing, a listing that includes equipment/vehicle description, make, model, model year, serial number (if applicable), cost, date acquired is to be provided.

- A declaration of available undrawn securitization credit with Sun Life (i.e. with margin report).
- Aged listing of used vehicles. To include date acquired, acquisition cost, year, make and model.
- Aged listing of customer accounts receivable.

Annually

Financial statements for the following companies will be provided within 120 days of each fiscal year-end:

- Audited Consolidated financial statements for Bodkin Financial Corporation.
- Audited financial statements for Bodkin Leasing Corporation.
- Audited financial statements for Bodkin Capital Corporation.
- Notice to reader financial statements for Bodkin Vehicle Leasing Corporation.
- Notice to reader financial statements for Disc Automotive Software Systems Inc.
- Notice to reader financial statements for 2087241 Ontario Limited
- Notice to reader financial statements for 2087248 Ontario Limited
- Notice to reader financial statements for 2087247 Ontario Limited
- Notice to reader financial statements for 2079343 Ontario Inc.
- Notice to reader financial statements for RVS Credit Corporation
- Notice to reader financial statements for BFG Investment Corporation

COVENANTS/CONDITIONS & UNDERSTANDINGS

1. The ratio of the Borrower's (combined) Total Debt to Tangible Net Worth ("TNW") must not exceed a ratio of 5.25 to 1. The term "Tangible Net Worth" shall mean the recorded consolidated financial statement value of shareholder's equity in the business, including the value of preference shares, plus any loan made by the shareholders to the business and formally subordinated and postponed in favour of the Bank, on terms acceptable to the Bank, minus the following, if not already provided for or deducted: allowance for intangible assets including leasehold improvements, goodwill, franchises, patent rights, copyrights and trademarks; reserve amounts for credit losses; amounts due by officers, affiliates or by directors and provision for income tax deemed reasonable by the Bank. TNW does not include \$3,000,000 provided to the borrower from Sun Life by way of subordinated debenture.

Total Debt to exclude deferred revenues and deferred taxes and is to include \$3,000,000 provided to the borrower from Sun Life by way of subordinated debenture.

2. Covenant relative to Total Debt to Tangible Net Worth is to be monitored by way of Internally prepared Monthly Operating Statements (MOS) of the Borrower which are to be provided by the Borrower within 30 days of each month end. Any deficiencies as evidenced by the monthly statements are to be remedied by the 30th day following the next month end (i.e. Deficiency on May 31st MOS be remedied by June 30th next).
3. TNW shall at all times be no less than 110% of the outstanding Securitization Proceeds Receivable. TNW, relative to this covenant, will include the \$3,000,000 subordinated debenture provided by Sun Life.
4. The ratio of Earnings Before Interest and Taxes (EBIT) to Interest Expense shall be no less than 1.75 to 1. Interest expense is to include interest payable on the Sun Life subordinated debenture.
5. Undertaking by the Borrower and company principals relative to covenants as follows:
 - I. No dividends, other capital withdrawals, bonuses, advances to shareholders, directors, officers or affiliated companies are permitted.
 - II. No changes in ownership or redemption of shares are permitted without the prior written approval of the Bank.
 - III. No mergers, acquisitions or material change in the Borrower's line of business are permitted without the prior written approval of the Bank.
 - IV. Guarantees or other contingent liabilities are not to be entered into and assets are not to be further encumbered without the prior written approval of the Bank.
 - V. To ensure that any Breach of the Borrower's Leverage Covenant will be corrected promptly (as set out in 2 above).
 - VI. Any lease portfolio acquisition requires the Bank's prior approval.
 - VII. Company to advise the Bank in writing prior to commencing any securitization activities other than with Sun Life.
 - VIII. None of the above actions are to take place without the prior written approval of the Bank, which will not be unreasonably withheld.
6. Annual confirmation from Sun Life is to be provided confirming their continued acceptability of the Bodkin securitized portfolio (the annual renewal of credit facilities letter from Sun Life shall be considered acceptable confirmation).
7. All Banking operations of the Borrower and its affiliates including Cash Management are to be maintained with Bank of Montreal.

Bodkin Financial Corporation

September 20, 2011

8. The Borrower shall permit the Bank's representative to enter upon the Borrower's premises and make available its records at any time during reasonable business hours for audit purposes.
9. Bank financing is subject to periodic review, not less frequently than annually.

SECURITY (all held except where indicated as to be obtained)

From Bodkin Financial Corporation

1. General Security Agreement, representing a first charge over all assets.
2. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
3. Letter of Undertaking Signed by Bodkin Financial Corporation and company principals relative to covenants as outlined in Covenants (No. 5) above.
4. Operating Loan Agreement.
5. Priority Agreements satisfactory to the Bank's solicitors, with Sun Life Insurance Company, Industrial Alliance Insurance and Financial Services Inc. (formerly National Life Assurance Company of Canada) and Bank of Montreal.
6. Subrogations / postponements as required.
7. Landlord's Waiver.
8. Copy of and assignment of "All Risk" Insurance policy (including Garage Policy) with loss payable to the Bank and containing a standard mortgage clause. Copy of Lessor's Contingent Liability Insurance (\$1,000,000. minimum coverage).
9. FirstBank Fixed Rate Lending Agreements, Monthly Adjustable (re: CDOR borrowing).
10. MasterCard Corporate Card Account Agreement and related documentation.
11. Signed Term Sheet. **TO BE REPLACED BY THIS TERM SHEET.**
12. Amendment and Acknowledgement Agreement confirming indebtedness and continuing effect of all security.
13. Priority/Inter-Creditor Agreement among BMO, Sun Life Assurance Company of Canada, Industrial Alliance Insurance and Financial Services, the Borrower, Bodkin Leasing Corporation and Bodkin Capital Corporation.

SUNDRY

1. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087241 Ontario Limited.
2. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087248 Ontario Limited.
3. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087247 Ontario Limited.
4. Guarantee in the amount of \$35,000,000 with enabling resolution from 2079343 Ontario Limited.
5. Guarantee in the amount of \$35,000,000 with enabling resolution from RVS Credit Corporation.

6. Guarantee in the amount of \$35,000,000 with enabling resolution from BFG Investment Corporation.
7. Guarantee in the amount of \$35,000,000 with enabling resolution from BFG Acquisition Corporation.
8. Postponement Agreement signed by BMO, BFG Acquisition Corporation and the Borrower, subordinating obligations to the Bank.
9. Postponement Agreement signed by BMO, Bodkin Equipment Leasing Corporation and the Borrower, subordinating obligations to the Bank.
10. Favourable solicitor's letter of opinion re continued Bank first ranking security as it relates to both the acquisition and amalgamation (with 551520 Ontario Limited).
11. Solicitor's Conflict Letter.

From Bodkin Leasing Corporation

1. Guarantee in the amount of \$35,000,000 with enabling resolution from Bodkin Leasing Corporation.
2. General Security Agreement, representing a first charge over all assets.
3. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
4. Amendment and Acknowledgement Agreement confirming guarantee and continuing effect of all security.

From Bodkin Capital Corporation

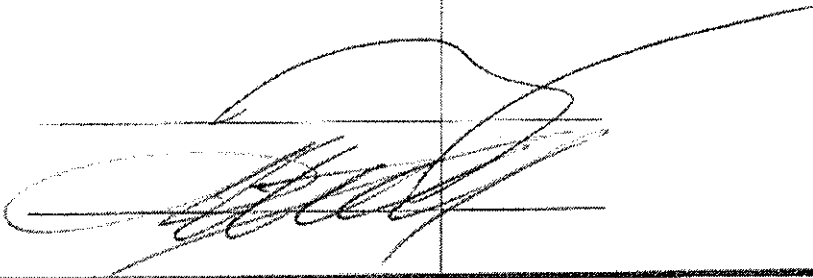
1. Guarantee in the amount of \$35,000,000 with enabling resolution from Bodkin Capital Corporation.
2. General Security Agreement, representing a first charge over all assets.
3. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (Includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
4. Amendment and Acknowledgement Agreement confirming guarantee and continuing effect of all security.

September 20, 2011

The Summary of Terms and Conditions contained in this Term Sheet are accepted

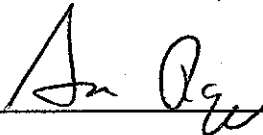
this 21ST day of SEPTEMBER 2011.

BODKIN FINANCIAL CORPORATION

A large, stylized handwritten signature in black ink, written over two horizontal lines. The signature is cursive and appears to be a name, possibly "Bodkin".

TAB C

**THIS IS EXHIBIT "C" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**



Bank of Montreal

Guarantee for Indebtedness of an Incorporated Company

To the BANK OF MONTREAL:

IN CONSIDERATION of the Bank of Montreal (hereinafter the "Bank") dealing with **Bodkin Financial Corporation**

herein referred to as the Customer, the undersigned hereby jointly and severally guarantee(s) payment to the Bank of all present and future debts and liabilities direct or indirect or otherwise, now or at any time and from time to time hereafter due or owing to the Bank from or by the Customer or by any successor corporation of the Customer and whether incurred by the Customer alone or jointly with any other corporation, person or persons, or otherwise howsoever: provided, however, that the liability of the undersigned and of each of the undersigned herein is limited to
\$ 35000000.00Dollars

Thirty-Five Million Dollars

with interest thereon at a rate of zero per cent per annum above the Bank's prime interest rate in effect from time to time, from date of demand for payment of same. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it will use to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock or constitution of the Customer, shall in any way affect the liability of the undersigned or any of them, either with respect to transactions occurring before or after any such change, and the Bank shall not be concerned to see or inquire into the powers of the Customer or any of its directors or other agents, acting or purporting to act on its behalf, and moneys, advances, renewals or credits, in fact borrowed or obtained from the Bank in professed exercise of such powers shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding that such borrowing or obtaining of moneys, advances, renewals or credits shall be in excess of the powers of the Customer or of its directors or other agents aforesaid, or be in any way irregular, defective or informal. If the Customer shall amalgamate with one or more other corporations, this guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation.

IT IS FURTHER AGREED that the Bank, without consent of the undersigned and without exonerating in whole or in part the undersigned, or any of them (if more than one), may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from, or from perfecting securities of, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with the Customer and all other persons (including the undersigned, or any one of them, and any other guarantor) and securities, as the Bank may see fit, and that all dividends, compositions, and moneys received by the Bank from the Customer from any other persons or estates capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank shall have received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall cover and secure any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of the sums of money due to the Bank from the Customer either alone or in conjunction with any other corporation, person or persons, or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek any recourse against the Customer or other persons or the securities it may hold before being entitled to payment from the undersigned of all and every debts and liabilities hereby guaranteed. The undersigned and each of them (if more than one) hereby renounces the benefits of discussion and division. The undersigned and each of them (if more than one) renounces to claim against, or set up against, the Bank any right which the undersigned or each of them (if more than one) may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned, or any one or more of them (if more than one), or the respective executors, administrators or legal representatives of any of the undersigned, may determine his or their further liability under this continuing guarantee by ninety days' notice in writing to be given to the Bank, and the liability hereunder of the undersigned and each of them (if more than one), and his or their respective executors, administrators and legal representatives shall continue until the expiration of ninety days after the giving of such notice, notwithstanding the death or insanity of any of the undersigned, and after the expiry of such notice the undersigned and each of them (if more than one), and his or their respective executors, administrators and legal representatives shall remain liable under the guarantee in respect of any sum or sums of money owing to the Bank as aforesaid on the date such notice expired and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date maturing thereafter, but such determination in any manner of further liability of any one or more of the undersigned or of the respective executors, administrators or legal representatives of any of the undersigned shall not prevent the continuance of the liability hereunder of any others or other of the undersigned or of their or his respective executors, administrators, or legal representatives. If after such determination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this guarantee shall continue after the determination as if such payment had not been made. Every Certificate issued under the hand of the Manager or Acting Manager of the Bank for the time being at the Branch where the Customer's account shall be kept, purporting to show the amount at any particular time due and payable to the Bank, and covered by this guarantee, shall be received as conclusive evidence as against the undersigned and every one of them (if more than one), and his or their respective executors, administrators and legal representatives, that such amount is at such time so due and payable to the Bank and is covered hereby.

THIS CONTRACT shall be construed in accordance with the laws of the Province of Ontario and for the purpose of legal proceedings this contract shall be deemed to have been made in the said Province and to be performed there, and the Courts of that Province shall have jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the Courts of any other Province or country.

NOTWITHSTANDING the provisions of any Statute relating to the rate of interest payable by debtors, this contract shall remain in full force and effect whatever the rate of interest received or demanded by the Bank.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned and each of them are hereby postponed to the debts and liabilities of the Customer to the Bank and all moneys received by any of the undersigned or their or his assigns thereon shall be received as Trustees for the Bank and shall be paid over to the Bank.

Guarantor(s)
Initial(s)


THE UNDERSIGNED and each of them (if more than one) acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned or any of them (if more than one) affecting the liability of the undersigned or any of them (if more than one) under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other Guarantees held or which may hereafter be held by the said Bank. For greater certainty and without limiting the generality of the foregoing, the Guarantor agrees that this Guarantee is in addition to and not in substitution of the Guarantee(s) dated N/A, and N/A in the amount(s) of \$ and \$. The present Guarantee shall remain in full force and effect until all debts and obligations hereby secured have been irrevocably and indefeasibly paid and released.

This clause
applies to
the Province
of Québec
only.

It is the express wish of the Parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

AS WITNESS the hands and seals of the undersigned, at Toronto, Ontario

this 3rd day of May, 2004

WITNESS	SIGNATURE OF GUARANTOR(S)
	<p data-bbox="747 934 1088 966">BODKIN CAPITAL CORPORATION</p>  <p data-bbox="747 1029 958 1102">Per: Name: John Mitchell Title: Secretary</p> <div data-bbox="1364 1113 1477 1218" style="text-align: center;">SEAL</div> <div data-bbox="1364 1386 1477 1491" style="text-align: center;">SEAL</div> <div data-bbox="1364 1701 1477 1806" style="text-align: center;">SEAL</div>

If executed
by a
company
with a
corporate
seal, the
corporate
seal should
be affixed.

Initials



Bank of Montreal

Guarantee for Indebtedness of an Incorporated Company

To the BANK OF MONTREAL:

IN CONSIDERATION of the Bank of Montreal (hereinafter the "Bank") dealing with **Bodkin Financial Corporation**

herein referred to as the Customer, the undersigned hereby jointly and severally guarantee(s) payment to the Bank of all present and future debts and liabilities direct or indirect or otherwise, now or at any time and from time to time hereafter due or owing to the Bank from or by the Customer or by any successor corporation of the Customer and whether incurred by the Customer alone or jointly with any other corporation, person or persons, or otherwise howsoever: provided, however, that the liability of the undersigned and of each of the undersigned herein is limited to

\$ 35000000.00Dollars

Thirty-Five Million Dollars

with interest thereon at a rate of zero per cent per annum above the Bank's prime interest rate in effect from time to time, from date of demand for payment of same. The term "prime interest rate" means the floating annual rate of interest established from time to time by the Bank as the base rate it will use to determine rates of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

IT IS AGREED that no change in the name, objects, capital stock or constitution of the Customer, shall in any way affect the liability of the undersigned or any of them, either with respect to transactions occurring before or after any such change, and the Bank shall not be concerned to see or inquire into the powers of the Customer or any of its directors or other agents, acting or purporting to act on its behalf, and moneys, advances, renewals or credits, in fact borrowed or obtained from the Bank in professed exercise of such powers shall be deemed to form part of the debts and liabilities hereby guaranteed, notwithstanding that such borrowing or obtaining of moneys, advances, renewals or credits shall be in excess of the powers of the Customer or of its directors or other agents aforesaid, or be in any way irregular, defective or informal. If the Customer shall amalgamate with one or more other corporations, this guarantee shall continue and apply to all debts and liabilities owing to the Bank by the corporation continuing from the amalgamation.

IT IS FURTHER AGREED that the Bank, without consent of the undersigned and without exonerating in whole or in part the undersigned, or any of them (if more than one), may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from, or from perfecting securities of, may accept compositions from, and may otherwise change the terms of any of the debts and liabilities hereby guaranteed and otherwise deal with the Customer and all other persons (including the undersigned, or any one of them, and any other guarantor) and securities, as the Bank may see fit, and that all dividends, compositions, and moneys received by the Bank from the Customer from any other persons or estates capable of being applied by the Bank in reduction of the debts and liabilities hereby guaranteed, shall be regarded for all purposes as payments in gross, and the Bank shall be entitled to prove against the estate of the Customer upon any insolvency or winding-up in respect of the whole of said debts and liabilities, and the undersigned shall have no right to be subrogated to the Bank in respect of any such proof until the Bank shall have received from such estate payment in full of its claim with interest.

AND IT IS FURTHER AGREED that this shall be a continuing guarantee, and shall cover and secure any ultimate balance owing to the Bank, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of the sums of money due to the Bank from the Customer either alone or in conjunction with any other corporation, person or persons, or otherwise howsoever, or attempting to do so. The Bank shall not be obliged to seek any recourse against the Customer or other persons or the securities it may hold before being entitled to payment from the undersigned of all and every debts and liabilities hereby guaranteed. The undersigned and each of them (if more than one) hereby renounces the benefits of discussion and division. The undersigned and each of them (if more than one) renounces to claim against, or set up against, the Bank any right which the undersigned or each of them (if more than one) may have to be subrogated in any of the rights, hypothecs, privileges and other security held from time to time by the Bank. The undersigned, or any one or more of them (if more than one), or the respective executors, administrators or legal representatives of any of the undersigned, may determine his or their further liability under this continuing guarantee by ninety days' notice in writing to be given to the Bank, and the liability hereunder of the undersigned and each of them (if more than one), and his or their respective executors, administrators and legal representatives shall continue until the expiration of ninety days after the giving of such notice, notwithstanding the death or insanity of any of the undersigned, and after the expiry of such notice the undersigned and each of them (if more than one), and his or their respective executors, administrators and legal representatives shall remain liable under the guarantee in respect of any sum or sums of money owing to the Bank as aforesaid on the date such notice expired and also in respect of any contingent or future liabilities incurred to or by the Bank on or before such date maturing thereafter, but such determination in any manner of further liability of any one or more of the undersigned or of the respective executors, administrators or legal representatives of any of the undersigned shall not prevent the continuance of the liability hereunder of any others or other of the undersigned or of their or his respective executors, administrators, or legal representatives. If after such determination any payment from the Customer must be returned to the Customer, or any successor or representative of the Customer, for any reason (including the designation of such payment as a mistake or as a preference following the bankruptcy of the Customer), then this guarantee shall continue after the determination as if such payment had not been made. Every Certificate issued under the hand of the Manager or Acting Manager of the Bank for the time being at the Branch where the Customer's account shall be kept, purporting to show the amount at any particular time due and payable to the Bank, and covered by this guarantee, shall be received as conclusive evidence as against the undersigned and every one of them (if more than one), and his or their respective executors, administrators and legal representatives, that such amount is at such time so due and payable to the Bank and is covered hereby.

THIS CONTRACT shall be construed in accordance with the laws of the Province of Ontario and for the purpose of legal proceedings this contract shall be deemed to have been made in the said Province and to be performed there, and the Courts of that Province shall have jurisdiction over all disputes which may arise under this contract, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the undersigned in the Courts of any other Province or country.

NOTWITHSTANDING the provisions of any Statute relating to the rate of interest payable by debtors, this contract shall remain in full force and effect whatever the rate of interest received or demanded by the Bank.

ALL DEBTS AND LIABILITIES present and future of the Customer to the undersigned and each of them are hereby postponed to the debts and liabilities of the Customer to the Bank and all moneys received by any of the undersigned or their or his assigns thereon shall be received as Trustees for the Bank and shall be paid over to the Bank.

Guarantor(s)
Initial(s)

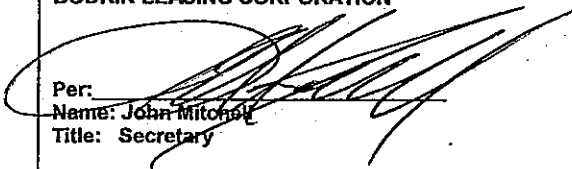
THE UNDERSIGNED and each of them (if more than one) acknowledges that this Guarantee has been delivered free of any conditions and that no representations have been made to the undersigned or any of them (if more than one) affecting the liability of the undersigned or any of them (if more than one) under this Guarantee save as may be specifically embodied herein and agrees that this Guarantee is in addition to and not in substitution for any other Guarantees held or which may hereafter be held by the said Bank. For greater certainty and without limiting the generality of the foregoing, the Guarantor agrees that this Guarantee is in addition to and not in substitution of the Guarantee(s) dated N/A, and N/A in the amount(s) of \$ and \$. The present Guarantee shall remain in full force and effect until all debts and obligations hereby secured have been irrevocably and indefeasibly paid and released.

This clause
applies to
the Province
of Québec
only.

It is the express wish of the Parties that this agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

AS WITNESS the hands and seals of the undersigned, at Toronto, Ontario

this 3rd day of May, 2004

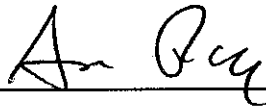
WITNESS	SIGNATURE OF GUARANTOR(S)
	<p data-bbox="747 940 1084 961">BODKIN LEASING CORPORATION</p> <div data-bbox="698 955 1266 1123"> <p>Per: </p> <p>Name: John Mitton</p> <p>Title: Secretary</p> </div> <div data-bbox="1356 1102 1477 1207"> <p>SEAL</p> </div> <div data-bbox="1356 1375 1477 1480"> <p>SEAL</p> </div> <div data-bbox="1356 1701 1477 1806"> <p>SEAL</p> </div>

If executed
by a
company
with a
corporate
seal, the
corporate
seal should
be affixed.

Initials

TAB D

**THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in cursive script, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

SECURITY AGREEMENT

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the Personal Property Security Act (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations:

Please see Schedule A attached hereto.

2. The Debtor hereby

(a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto;

(b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;

(c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above;

(d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom; and

(e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained).

For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for the greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any scheduled attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.
4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.
5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor to the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligation of the Debtor to the Bank.
6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.
7. The Debtor shall all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and reasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.
8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.
9. The debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:
 - (a) the Debtor shall default under any of the Obligations;

- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be bona fide opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead, or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) As a whole or in various lots;
- (b) By a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) By private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security

Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.
13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or rights resulting therefrom.
14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.
15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.
16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment or any indebtedness or liability of the Debtor to the Bank.
17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.
18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.
19. In construing this Security Agreement, terms herein shall have the same meaning as defined in the Personal Property Security Act (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating hereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

Insert date of
execution

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor as of the
3rd day of May, 2004.

BODKIN FINANCIAL CORPORATION

Per:

Name:

John Mitchell, Secretary

To be signed by Debtor; if
Debtor is a corporation ensure
signatures are authorized and if
Debtor is a corporation with a
corporate seal, affix Corporate
Seal; Debtor's name should be
typed

SCHEDULE A

List of Locations where Assets Located

The assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located in numerous locations throughout Canada. All other assets of the Debtor and all books and records in respect of the Debtor and the assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located at the following address:

2150 Dunwin Drive, Unit 1
Mississauga, Ontario, L5L 1C7

Doc #330731v2



1. OBLIGATIONS SECURED

- 1.1 The hypothec in Section 2 of this Agreement is granted to secure all obligations, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person, of the undersigned (the "Customer") towards BANK OF MONTREAL (the "Bank") under or pursuant to this Agreement and all other obligations described in Section 9.1.
- 1.2 All obligations secured by this hypothec are herein called the "Secured Obligations", and such expression includes interest, costs and damages.

2. HYPOTHEC

- 2.1 For good and valuable consideration, the Customer hypothecates in favour of the Bank all present and future property of the Customer, both corporeal and incorporeal, now owned or hereafter acquired by the Customer, including without limitation the following:

- (a) all present and future machinery and equipment of the Customer, including, without limitation, all tools, implements, furniture and vehicles;
- (b) all present and future inventory of the Customer including, without limitation, all property in stock, movable property in reserve, raw materials, goods in process, finished products, animals, wares, as well as any other property held for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease, or for use in providing a service by the Customer in the ordinary course of operation of its enterprise;
- (c) all present and future claims of the Customer including, without limitation, all customer accounts, accounts receivable, rights of action, demands, judgments, contract rights, amounts on deposit, proceeds of sale, assignment or lease of any property, rights or titles, and any indemnities payable under any contract of insurance whether or not such insurance is on property forming part of the Hypothecated Property (as hereinafter defined), the whole which are now due or which may become due to the Customer, together with all judgments and all other rights, benefits, guarantees and securities for the said claims which are now or may hereafter exist in favour of the Customer, and together with all books and accounts, client lists, client records, client files, titles, letters, invoices, papers and documents in any way evidencing or relating to all or any of the claims;
- (d) all present and future Securities (as defined in Section 8.4(f)), instruments, bills of lading, warehouse receipts, documents or other evidences of title of the Customer;
- (e) all present and future goodwill, trademarks, patents and patent rights, copyrights, inventions, other intangible property, monies, agreements and rights under agreements of the Customer, and all its present and future undertaking; and
- (f) all client lists, client records, client files, titles, documents, records, receipts, invoices and accounts evidencing any of the aforesaid Hypothecated Property or relating thereto including, without limitation, computer disks, tapes and related data processing media and rights of the Customer to retrieve same from third parties;

(all such present and future property being herein called the "Hypothecated Property"), for the amount specified in Section 9.2, with interest from the date hereof at the rate per annum specified in Section 9.2.

- 2.2 The following property, to the extent not already included in the description in Section 2.1, is also covered by the hypothec constituted by this Agreement:

- (a) the proceeds of any sale, assignment, lease or other disposition of the property described in Section 2.1, any claim resulting from such a sale, assignment, lease or other disposition, as well as any property acquired in

replacement thereof (it being understood that this clause shall not be interpreted as permitting the Customer to dispose of the Hypothecated Property in contravention of the provisions of this Agreement);

- (b) any indemnity or proceeds of expropriation payable in respect of the Hypothecated Property;
- (c) any rights attached to the Hypothecated Property, as well as the fruits and revenues thereof;
- (d) if the property described in Section 2.1 includes Securities, all other Securities issued or received in substitution, renewal, addition or replacement of Securities, or issued or received on the purchase, redemption, conversion, cancellation or other transformation of Securities or issued or received by way of dividend or otherwise to holders of Securities.

3. REPRESENTATIONS

The Customer represents to the Bank as follows:

- 3.1 The Customer is the sole owner of the Hypothecated Property which now exists and all the Hypothecated Property is free and clear of all prior claims, hypothecs, security interests and other rights in favour of any other person, except for those, if any, disclosed by the Customer to the Bank in Section 9.3; the Customer is in possession of all the Hypothecated Property.
- 3.2 The Hypothecated Property is situated in the Province of Quebec, except for the property, if any, described in Section 9.4.
- 3.3 None of the Hypothecated Property is destined to be used in more than one jurisdiction, including more than one Province of Canada or State of the United States of America, except for such property, if any, as is described with the applicable jurisdictions set forth in Section 9.5.
- 3.4 The domicile of the Customer (its head office if the Customer is a legal person or its domicile, if the Customer is a natural person) is situated at the address indicated in Section 9.6.
- 3.5 If this hypothec is on a universality of property or a movable represented by a bill of lading, the Customer is carrying on an enterprise.
- 3.6 None of the Hypothecated Property is incorporated in an immovable property; and none of the Hypothecated Property is permanently physically attached or joined to an immovable property, except for Hypothecated Property which has not lost its individuality and which is used for the operation of the Customer's enterprise or the pursuit of the Customer's activities.
- 3.7 If the Customer is a natural person, the Customer operates one or more enterprises and the Hypothecated Property is property of such enterprise or enterprises.
- 3.8 If the Customer is a natural person, the date of birth of the Customer is that set forth in Section 9.7.

4. COVENANTS

The Customer agrees with the Bank as follows:

- 4.1 The Customer will notify the Bank in writing without delay of any change in its name, its domicile or in the contents or accuracy of the representations made in Section 3.
- 4.2 The Customer shall pay when due all duties, levies, taxes, charges and licence and other fees it may owe at any time under any fiscal law as well as those relating to the Hypothecated Property and any claim which may rank prior to or *pari passu* with the hypothec constituted by this Agreement. The Customer shall submit to the Bank on request receipts or other evidence establishing such payment; and the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate as to amounts owing by the Customer at the end of such month under any fiscal law.

- 4.3 The Customer shall, at its expense, insure the Hypothecated Property and shall keep the Hypothecated Property at all times insured against all risks of loss or damage caused by theft or fire and against any other risk that is customary to insure against or that a prudent administrator would insure against or that the Bank shall require, the whole for the full insurable value of the Hypothecated Property, and on such terms and with responsible insurers as are satisfactory to the Bank. Each policy of insurance shall provide that such insurance shall not be cancelled for any reason or allowed to lapse without 30 days prior written notice to the Bank. The Bank is hereby designated the beneficiary of the indemnities payable in virtue of each policy of insurance (except as regards public liability) and the Customer shall cause such designation to be inscribed on the policies. If requested by the Bank, the Customer shall assign to the Bank the policies or indemnities payable thereunder or ensure each policy contains a mortgage clause satisfactory to the Bank. The Customer will deliver to the Bank on request evidence of payment of premiums and a copy of each policy and, at least 30 days prior to the expiry or termination of a policy, the Customer shall deliver to the Bank a copy of its renewal or of its replacement. If the Customer fails to procure or maintain any such insurance, the Bank shall have the right, but not the obligation, to effect such insurance in its name or in the Customer's name, and any premiums or other expenses paid or incurred by the Bank in so doing shall forthwith be due and payable by the Customer to the Bank, with interest as provided in Section 4.14.
- 4.4 The Customer shall do all things, shall deliver to the Bank all documents and information and shall sign all documents necessary in order that the hypothec constituted by this Agreement shall have full effect and shall remain at all times opposable to third parties and in order that the Bank may fully exercise its rights hereunder.
- 4.5 The Customer shall protect, use and keep in good repair the Hypothecated Property and shall carry out its activities in such manner as to preserve the value of the Hypothecated Property, and shall permit the Bank, its officers or agents access to its premises to inspect or evaluate the same; the Customer shall comply with the requirements of laws and regulations applicable to the carrying on of its enterprise and to its ownership, possession and use of the Hypothecated Property, including laws and regulations in respect of the environment.
- 4.6 The Customer will maintain such books and accounting records as a prudent administrator would maintain in relation to its enterprise and to the Hypothecated Property and it will permit the Bank to examine them and obtain copies of them.
- 4.7 The Customer shall not create or permit to exist any prior claim, hypothec, security interest or other right in favour of a third party on or which may affect the Hypothecated Property, other than those which the Bank shall have previously agreed to in writing.
- 4.8 The Customer shall not sell, assign or lease the Hypothecated Property, without the Bank's prior written consent. Notwithstanding the foregoing, the Customer may, for so long as it is not in default hereunder, sell or lease its inventory in the ordinary course of the carrying on of its enterprise.
- 4.9 Except with the prior written consent of the Bank, the Customer will not change the use, destination or nature of the Hypothecated Property, nor the place where the Hypothecated Property is located; nor will it permit the Hypothecated Property to be incorporated in an immovable property or to be permanently physically attached or joined to an immovable property, unless such Hypothecated Property does not lose its individuality and unless such Hypothecated Property is and will continue to be used for the operation of the Customer's enterprise or the pursuit of the Customer's activities. If the Customer is a legal person, the Customer will maintain its corporate existence in good standing and will not amalgamate with any other person, nor will it commence any proceedings with a view to its liquidation, without the prior written consent of the Bank.
- 4.10 If the Hypothecated Property includes inventory, the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate of the value of its inventory (calculated at the lesser of cost or market value) at the end of each such month.
- 4.11 The Customer will furnish to the Bank any information which the Bank may reasonably request in respect of the Customer's operations or the Hypothecated Property or to verify if the Customer is in compliance with its covenants and obligations contained in this Agreement, including lists of equipment, copies of financial statements and other documents. The Customer will immediately advise the Bank in writing of any fact or occurrence of such nature as may adversely affect the value of the Hypothecated Property or the financial situation of the Customer or which constitutes, or with the giving of notice or lapse of time or both, would constitute a default under this Agreement.
- 4.12 The Customer will reimburse to the Bank, all fees and expenses, legal or otherwise, and costs of registration in respect of this Agreement and in respect of all renewal titles, renewals of registration, notices of address,

acquittances and discharges in connection therewith and any appraisal or valuation fee and the costs of a copy of these presents, of all applications for registration and related documents.

- 4.13 The Customer will forthwith reimburse to the Bank, all extrajudicial fees and disbursements which the Bank may pay or for the payment of which it may become liable, in seeking to obtain the fulfilment of any obligations or undertakings of the Customer under this Agreement or to exercise its rights or preserve, protect or render opposable its interests the whole up to an amount not exceeding 20% of the amount of the hypothec specified in Section 9.2.
- 4.14 Except as otherwise provided hereunder, all fees, costs and expenses incurred by the Bank and reimbursable by the Customer under this Agreement, shall bear interest from the date the costs, fees or expenses are incurred by the Bank at an annual rate equal to the Prime Rate of the Bank in effect from time to time, plus 3% per annum. All such costs, fees and expenses incurred or paid by the Bank, with interest thereon, shall form part of the Secured Obligations. The Prime Rate of the Bank is the floating annual rate of interest established from time to time by the Bank as the base rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is that set forth in Section 9.8.
- 4.15 The Customer will duly perform and comply with all its obligations to the Bank, whether under this Agreement or any other agreement, instrument or other document.

5. CERTAIN RIGHTS AND RESPONSIBILITIES OF THE BANK

- 5.1 The Bank may from time to time, at the expense of the Customer, inspect the Hypothecated Property or proceed to the evaluation of the Hypothecated Property. For this purpose, the Customer will permit the Bank access to the locations where the Hypothecated Property may be found, as well as to the places of business of the Customer, and the Customer will permit the Bank to examine the accounting records and documents relating to the Hypothecated Property.
- 5.2 In the event the Customer fails to observe or perform any of its obligations or undertakings under this Agreement, the Bank may, but shall not be obliged to, perform the same and any fees, costs or expenses incurred in so doing shall be forthwith due and payable by the Customer to the Bank, with interest as provided in Section 4.14, and shall form part of the Secured Obligations.
- 5.3 If the Hypothecated Property includes Securities, the Bank may, but shall not be obliged to, cause the Bank, or its nominee, to be registered as holder of such Securities and exercise all rights in respect of such Securities, including any right to vote, any right of conversion or any right of redemption.
- 5.4 If the Customer has surrendered the Hypothecated Property to the Bank or its agent or if the Bank or its agent has possession of the Hypothecated Property, neither the Bank nor its agent shall have any obligation to continue the use, operation or exploitation of the Hypothecated Property or to continue the use for which it is ordinarily destined or to exercise the rights pertaining to the Hypothecated Property or to make it productive; and the Customer agrees that the Bank or its agent may do such acts and things, or refrain from doing such acts and things, as the Bank or its agent, in its sole discretion, deems appropriate for the exercise of its rights and the realization and enforcement of its hypothec.
- 5.5 The Customer hereby irrevocably constitutes the Bank or any manager or other officer of the Bank, its agent, with the power of substitution, in order to perform any act and sign any document, including any transfer or endorsement of Securities, necessary or useful to the exercise of the rights conferred on the Bank pursuant to this Agreement.
- 5.6 All sums received by the Bank in the exercise of its rights arising under or pursuant to this Agreement or by law may be held by the Bank as Hypothecated Property, or may be applied by the Bank to the payment of the Secured Obligations, whether or not then exigible. The Bank may impute and apply such sums towards payment of any part or parts of the Secured Obligations as the Bank in its sole discretion shall decide, and may change any imputation or application as it sees fit.
- 5.7 The exercise by the Bank of any of its rights shall not prevent it from exercising any other rights it may have arising from this Agreement or by law; the rights of the Bank are cumulative and not alternative. The Bank may waive any provision hereof or any default, however the non-exercise by the Bank of any of its rights or any such waiver shall

not constitute a renunciation of the exercise thereafter of such right or a renunciation of any other provision or of any other default. The Bank may exercise the rights arising from this Agreement without having exercised its rights against any other person liable for the payment of the Secured Obligations, or any of them, and without having realized any other security securing the Secured Obligations.

- 5.8 The Bank is only required to exercise reasonable prudence and diligence in the exercise of its rights or the fulfilment of its obligations and, in any event, the Bank is only responsible for its intentional or gross fault. The Customer shall indemnify the Bank for any losses or expenses incurred by the Bank, or damages claimed against the Bank, for which the Bank is not so responsible.
- 5.9 The Bank may delegate to any other person, or be represented by any other person in, the exercise of its rights or the fulfilment of its obligations resulting from this Agreement; the Bank may furnish to such person any information which the Bank may have concerning the Customer or the Hypothecated Property.
- 5.10 The rights conferred on the Bank in virtue of this Section 5 may be exercised by the Bank either before or after a default by the Customer under the terms of this Agreement.

6. PROVISIONS APPLICABLE IF THE HYPOTHECATED PROPERTY INCLUDES A CLAIM OR CLAIMS

- 6.1 If the Hypothecated Property includes a claim or claims, whether present or future, then in addition to the other provisions of this Agreement, the following provisions shall apply in respect of such claims:
 - (a) The Bank shall have the right to collect (i) the capital falling due of, and any revenues of, any such claim which is or represents the indemnity payable under any insurance policy in respect of loss or damage to the Hypothecated Property and (ii) the capital or revenues of any claim described or of the nature specified in Section 9.9.
 - (b) The Bank authorizes the Customer to collect when due the capital falling due of, and any revenues of, any other claim until the Bank shall have given the Customer a notice withdrawing such authorization, whereupon the Bank shall immediately have the right to collect all such capital and revenues. This notice of withdrawal may be given at any time, either before or after a default under this Agreement, and may be given from time to time in respect of all or any part or parts of the claims.
 - (c) Upon notice by the Bank to the Customer, which may be given either before or after a default under this Agreement or before or after the notice of withdrawal referred to in Section 6.1(b), the Bank may require the Customer to immediately remit to the Bank all or a specified part of capital and revenues of claims received by the Customer or to deposit the same in one or more designated bank accounts or otherwise to hold, deal with or deliver such capital and revenues, all on such terms and conditions as the Bank may specify in such notice.
 - (d) The Bank shall have no obligation to exercise any rights in respect of any claims nor to enforce or to see to payment of the same, whether by legal action or otherwise. The Bank may give acquittances for any sums it collects and may, but shall not be obligated to, realize any of the claims, grant extensions, grant releases, accept compositions, renounce and generally deal with the claims, and any guarantees or security therefor, and take any action to preserve, protect or secure such claims, at such times and in such manner as it deems advisable at its sole discretion, without notice to or the consent of the Customer, and without incurring any liability therefor and without any obligation to render any account in respect thereof or in respect of moneys collected, other than to remit to the Customer any amounts collected over and above the Secured Obligations.
 - (e) Any amounts collected by the Customer or by the Bank or deposited in a designated bank account shall form part of the Hypothecated Property and be subject to the hypothec hereof. The Bank may apply any amounts received by it towards payment of all or part of the Secured Obligations, even if not yet exigible, including any fees, costs or other expenses incurred by the Bank and secured hereunder and may impute and apply such amounts towards payment of any part or parts of the Secured Obligations as the Bank at its sole discretion shall decide, and may change any imputation or application as it sees fit.
 - (f) The Customer waives any obligation the Bank may have to inform the Customer of any irregularity in the payment of any sums exigible on any claims or rights.

- (g) The Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a detailed list of all claims owing to the Customer at the end of each such month including the name and address of the debtor of each claim, the amount due, the aging of the account and any security held by the Customer for any claim.
- (h) The Customer shall from time to time on request of the Bank deliver to the Bank, or permit the Bank or its officers or agents access to its premises for the purpose of examining and making copies of, all books and accounts, letters, invoices, papers, agreements, negotiable instruments, documents of title, hypothecs and other documents in any way evidencing or relating to all or any of the claims forming part of the Hypothecated Property and shall otherwise assist the Bank and furnish the Bank with all information which may assist the Bank in the collection thereof.
- (i) If this Agreement constitutes a hypothec on a universality of claims, the hypothec on the claims extends also to any claim under any insurance contract on the other property of the Customer.
- (j) The Customer represents that none of the claims which now exist is itself secured by a hypothec or guaranteed by a third party in favour of the Customer, except for those, if any, described in Section 9.10, and the Customer undertakes to notify the Bank immediately of any claim, present or future, which hereafter is or becomes secured by a hypothec or guaranteed by a third party in favour of the Customer and to deliver to the Bank the agreements or other documents now or hereafter constituting or evidencing the same.

7. DEFAULTS AND RECOURSES

7.1 The Customer will be in default under this Agreement in each of the following cases:

- (a) if any of the Secured Obligations is not paid when due; or
- (b) if any of the representations made in Section 3 or in any other declaration or certificate by the Customer delivered to the Bank is untrue or incorrect in a material respect; or
- (c) if the Customer does not perform or observe any of its covenants or undertakings contained in this Agreement or any obligation of the Customer required by law; or
- (d) if the Customer is in default under any other agreement, undertaking or evidence of indebtedness in favour of the Bank, including any agreement, undertaking or evidence of indebtedness referred to in Section 1 or Section 9.1, or under any other hypothec or security interest affecting the Hypothecated Property; or
- (e) if the Customer ceases to carry on its enterprise, or gives a notice of intention to make a proposal to or makes a proposal to its creditors or makes an assignment for the benefit of its creditors, or becomes insolvent or bankrupt or if any action is commenced or notice given with a view to rendering or declaring the Customer insolvent or bankrupt; or
- (f) if any action is taken or notice given by or against the Customer with a view to the winding up, liquidation, reorganization or relief or protection from creditors of the Customer including under the *Bankruptcy and Insolvency Act (Canada)* or the *Companies' Creditors Arrangement Act (Canada)*; or the Customer amalgamates with any other person; or
- (g) if any creditor of the Customer commences any action or gives any notice with a view to exercising any rights or remedies on or with respect to the Hypothecated Property, including by way of seizure, prior notice, notice of crystallization, taking possession or otherwise, or if a sequestrator is appointed; or
- (h) if any guarantor of the Secured Obligations, or any part thereof, dies or gives notice to the Bank of termination of a guarantee, or if a default occurs under any other hypothec in favour of the Bank securing all or any part of the Secured Obligations.

7.2 Without limiting the Bank's right to demand payment or to exercise any other right it may have under any other agreement or instrument, if the Customer is in default, any obligation the Bank may have to grant further credit or make further advances to the Customer shall terminate and/or all the obligations of the Customer to the Bank which are not then due shall thereupon be and become forthwith due and payable, in each case if the Bank so elects and

without any notice or demand by the Bank. If the Customer is in default, the Bank may also exercise any and all of the rights and recourses it may have hereunder or by law and it may enforce and realize its hypothec, including the exercise of the hypothecary rights in virtue of the *Civil Code of Quebec*. If the Bank gives the Customer a prior notice of its intention to exercise a hypothecary right the Customer shall, and shall cause any other person in possession of Hypothecated Property to, immediately voluntarily surrender it to the Bank.

7.3 In order to enforce and realize its hypothec, the Bank may use, at the Customer's expense, the premises where the Hypothecated Property is located, as well as the other property of the Customer. If the Hypothecated Property includes inventory, the Bank may complete the manufacture of such inventory and do any other thing necessary or useful to bring them to sale.

7.4 The Customer agrees that with respect to any sale by the Bank of any of the Hypothecated Property in the exercise of its rights, it will be commercially reasonable to sell such Hypothecated Property:

- (a) together or separately;
- (b) by auction or by call for tenders by advertising such sale or call for tenders once in a local daily newspaper at least seven (7) days prior to such sale or close of call for tenders; and
- (c) by sale by agreement after receipt by the Bank of at least two (2) offers from prospective purchasers, who may include persons related to or affiliated with the Customer or other customers of the Bank.

Any such sale may be on such terms as to credit or otherwise and as to upset price or reserve bid or price as the Bank at its sole discretion may deem advantageous, and the Customer agrees that the price received at any such sale shall constitute a commercially reasonable price.

The foregoing shall not preclude the Bank from agreeing to or making any sale in any other manner not prohibited by law nor shall it be interpreted to mean that only a sale made in conformity with the foregoing is commercially reasonable or that only the price received at a sale made in conformity with the foregoing shall constitute a commercially reasonable price.

8. GENERAL PROVISIONS

8.1 The hypothec constituted by this Agreement is in addition to and not in substitution for any other hypothec or security interest held by the Bank.

8.2 This hypothec constitutes continuing security which shall continue in effect notwithstanding any payment from time to time in whole or in part of the Secured Obligations and shall subsist until cancelled by the Bank, notwithstanding the extinction of the Secured Obligations. This hypothec may, by agreement between the Bank and the Customer from time to time, secure obligations in addition to or in substitution of the Secured Obligations.

8.3 In each of the cases set forth in Section 7.1 the Customer shall be in default by the mere lapse of time, without any notice putting the Customer in default being required.

8.4 When used in this Agreement:

- (a) The expression "Hypothecated Property" shall mean all or any part of the Hypothecated Property.

- (b) The expression "Customer" shall include the Customer, its successors and assigns, including any person resulting from the amalgamation of the Customer with any other person, and, in the case of a natural person, shall include its successors, executors, liquidators, heirs and legal representatives; this clause shall not give the Customer the right to assign any of its rights or obligations hereunder to, or to amalgamate with, any other person except as otherwise expressly permitted by this Agreement.
 - (c) The expression "Bank" shall include the Bank, and its successors and assigns, including any person resulting from the amalgamation of the Bank with any other person.
 - (d) The expression "Agreement" shall include this Agreement, as it may hereafter be amended, supplemented, modified, renewed, replaced or restated from time to time.
 - (e) References to a Section shall refer to Sections in this Agreement.
 - (f) The expression "Securities" shall include shares in the capital stock of a legal person; bonds, debentures, bills of exchange, promissory notes, negotiable instruments and other evidence of indebtedness; options or rights in respect of the foregoing; and any other instrument or title generally called or included as a security. The expression "Securities" shall mean any or all Securities.
 - (g) The expression "property" shall include property, titles and rights.
- 8.5 If several persons are designated as "Customer", each of them is solidarily responsible for the obligations of the Customer set forth in this Agreement; each Customer is responsible both individually and together with each other Customer for all the obligations of the Customer to the Bank.
- 8.6 The rights conferred on the Bank by this Agreement shall inure to the benefit of each successor of the Bank. The Bank shall have the right to assign all or any part of the Secured Obligations to any other person and this Agreement shall inure to the benefit of any such assignee in respect of all, or such part, of the Secured Obligations which have been so assigned.
- 8.7 All notices, demands and other communications to the Customer may be given to it at its address set forth in Section 9.11 or at any other address which the Customer notifies the Bank in writing. Such notices, demands and communications shall be sufficiently given if delivered personally or by messenger or sent by ordinary mail or telecopier to the Customer at such address and shall be considered received by the Customer, (i) if delivered personally or by messenger, when delivered, (ii) if sent by mail, four (4) working days after mailing and (iii) if sent by telecopier, when sent. The Customer hereby elects domicile at such address for the purposes of receiving notices, demands or other communications and for the service of legal proceedings. If the Bank is unable to locate the Customer at such address, the giving of any notice, demand or other communication or the service of any legal proceeding may be made at the office of the prothonotary of the Superior Court in the district in which the last address of the Customer referred to in the first sentence of this Section is located, at which office in such event the Customer also elects domicile for purposes of giving any notice, demand or other communication or the service of any legal proceeding.
- 8.8 If this hypothec is given to secure an obligation or obligations of a person other than the Customer (such other person being called the "Borrower" in this Section), the Customer hereby
- (a) waives the benefit of discussion and the benefit of division and agrees that the Bank shall not be obliged to exhaust its recourses against the Borrower or the Customer or any other person or against any other security or securities it may hold before enforcing or realizing on or otherwise dealing with the Hypothecated Property in such manner as the Bank considers desirable;
 - (b) agrees that the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and release any security, may abstain from taking security or publishing or perfecting security, make accept compositions from, may otherwise change the terms of the obligations or any security or guarantees therefor and may otherwise deal with the Borrower and any other persons and any securities as the Bank sees fit, without in any manner affecting or reducing the hypothec hereof; and
 - (c) agrees that all obligations of the Borrower to the Customer or any of them, if more than one, are hereby postponed to the obligations of the Borrower to the Bank and all moneys received thereon by the Customer or

any of them, if more than one, shall be received on behalf of the Bank and shall be immediately paid over to the Bank.

- 8.9 The Secured Obligations described in Section 9.1 are governed by one or more separate agreements with the Bank which determine, among other things, the amount of credit available to the Customer from the Bank and the interest rate or interest rates and other fees or charges which the Customer is required to pay on credit obtained under such agreement(s). The amount of the hypothec and rate of interest referred to in Section 2.1 and specified in Section 9.2 is the amount with the rate of interest for which the Hypothecated Property is hypothecated. The Bank is entitled to interest on credit made available under the said separate agreements at the rate or rates determined under the separate agreement applicable to the credit and not at the rate specified in Section 9.2, unless such rate is identical to the rate determined under the separate agreement applicable to the credit. The amount of credit which the Customer is entitled to obtain from the Bank is determined by the applicable separate agreement and not by the amount of the hypothec specified in Section 9.2 of this Agreement.
- 8.10 The Customer shall sign, acknowledge or deliver all such further instruments and shall do such other things as the Bank may reasonably require to give effect to or to confirm or protect the hypothec hereby constituted, including necessary inscriptions for the registration, renewal, carrying over or conservation of the hypothec and notices to third parties.
- 8.11 If any clause in this Agreement, or part thereof, is null or otherwise unenforceable, without effect, or deemed unwritten, the remaining provisions shall continue in full force and effect.
- 8.12 This Agreement is governed by and construed in accordance with the laws of the Province of Quebec.
- 8.13 The parties hereby confirm their express wish that this Agreement and all documents, agreements or notices directly or indirectly related hereto be drawn up in the English language. Les parties reconnaissent leur volonté expresse que le présent contrat ainsi que tous les documents, conventions ou avis s'y rattachant directement ou indirectement soient rédigés en langue anglaise.

This Agreement continues at Section 9, entitled «Information Referred to above in this Agreement».

This is a continuation of the movable hypothec - universality Bank of Montreal form LF 503 (Que).

9. INFORMATION REFERRED TO ABOVE IN THIS AGREEMENT

- 9.1 In addition to the obligations described in Section 1.1, this hypothec is granted to secure all obligations, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person:
- (a) of the Customer towards the Bank under or pursuant to a term sheet dated as of March 8, 2004, and all renewals, extensions, replacements, supplements or amendments thereto, or substitutions therefor or restatements thereof;
 - (b) of _____ to the Bank under or pursuant to _____ and all renewals, extensions, replacements, supplements or amendments thereto, or substitutions therefor or restatements thereof; and
 - (c) all other such obligations, present and future, of the Customer to the Bank.
- 9.2 The amount of the hypothec and the rate of interest referred to in Section 2.1:
thirty-five million dollars (\$35,000,000) with interest at the rate of twenty-five percent (25%) per annum.
- 9.3 Prior claims, hypothecs, security interests and other rights, referred to in Section 3.1:
N/A _____
- 9.4 Hypothecated Property situated outside the Province of Quebec and jurisdiction [city and province or state] where it is situated, referred to in Section 3.2:
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon, Northwest Territories and Nunavit
- 9.5 Hypothecated Property destined to be used in more than one jurisdiction and the applicable jurisdiction, referred to in Section 3.3:
motor vehicles _____
- 9.6 Domicile of the Customer, referred to in Section 3.4:
2150 Dunwin Drive
Unit 1
Mississauga, Ontario

- 9.7 Date of birth of a Customer who is a natural person, referred to in Section 3.8:
N/A
- 9.8 The Prime Rate on the date of this Agreement, referred to in Section 4.14, is 3.750% per annum.
- 9.9 Claims which the Bank shall have the right to collect referred to in Section 6.1(a):
N/A _____
- 9.10 Claims secured by a hypothec or guaranteed by a third party in favour of the Customer, referred to in Section 6.1(j).
[Describe claim, name of grantor of hypothec or of guarantor, date of hypothec or guarantee, nature of hypothec and registration numbers with respect to the hypothec, if any]:
N/A

9.11 Address of the Customer for notices, referred to in Section 8.7:
See 9.6 above

Signed at Toronto this 29th day of April, 2004.

Witnesses:

Customer: BODKIN FINANCIAL CORPORATION

By: 

John Mitchell, Secretary

By: _____

Accepted and agreed
BANK OF MONTREAL

By: 

Doc#336276v2

SECURITY AGREEMENT RE: LEASED VEHICLES

THIS AGREEMENT MADE as of this 3rd day of May, 2004.

BETWEEN:

BODKIN FINANCIAL CORPORATION,

the "Lessor"

- and -

BANK OF MONTREAL,

the "Bank"

WHEREAS:

- i) the Lessor is a lessor of automobiles, light trucks and other vehicles (collectively, "Vehicles") and in the ordinary course of its business from time to time, leases vehicles to its customers ("Lessees");
- ii) the Lessor has requested the Bank to lend money on the security of Vehicles which are to become the subject of leases to Lessees, and
- iii) the Lessor has agreed to give the Bank security interest in such Vehicles, in the leases between the Lessor and Lessees, in the lease proceeds and in the proceeds of disposition of such Vehicles:

NOW THEREFORE the Lessor hereby enters into this Security Agreement with the Bank for valuable consideration.

1. The Lessor may from time to time request a loan from the Bank by an executed "Lessor's Proceeds Request" (a "Proceeds Request") in the form set out in Appendix A hereto. If the request is accepted by the Bank, the Bank will provide to the Lessor, the requested loan to enable the Lessor to purchase or pay for the Vehicle or Vehicles described therein (all such Vehicles described in all such Proceeds Requests being hereinafter called "Financed Vehicles").
2. As security for the repayment of all loans made by the Bank to the Lessor and all other present and future indebtedness and liability of the Lessor to the Bank and interest thereon, the Lessor hereby grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank, as and by way of a fixed and specific mortgage and charge, and grants to the Bank a continuing security interest in the following collateral:

- (a) all Financed Vehicles currently or hereafter owned or acquired by the Lessor; and
- (b) all leases of Financed Vehicles and all rights, benefits and proceeds of any nature arising out of any Financed Vehicle or any lease of a Financed Vehicle including, without limiting the generality of the foregoing, all lease payments and insurance proceeds receivable in respect of any Financed Vehicle.

The parties hereto intend that the said security interest shall attach to each Financed Vehicle upon the advance of funds to the Lessor by the Bank in accordance with the Proceeds Request.

3. The Lessor represents, warrants and agrees as follows:

- (a) Except for leases permitted hereunder and the security interests - granted herein, the Lessor:
 - (i) will immediately use the loan made by the Bank pursuant to a Proceeds Request to acquire a good, free and clear title to the Financed Vehicle described therein, and
 - (ii) will keep all Financed Vehicles free from any lien, mortgage, charge, pledge, security interest or other encumbrance of any kind.
- (b) Title to the Financed Vehicles shall at all times be registered in the name of the Lessor;
- (c) The Lessor shall not lease or otherwise dispose of any or all of the Financed Vehicles without the consent of the Bank provided that the Lessor may lease a Financed Vehicle pursuant to a lease attached to a Proceeds Request;
- (d) Each lease permitted hereunder shall be in the Lessor's form as appended to the Proceeds Request;
- (e) The Lessor shall observe and perform its obligations under each lease and shall not amend, terminate or waive compliance with any provision of any lease without the Bank's written consent;
- (f) The execution and delivery of the Security Agreement does not breach any other agreement to which the Lessor is a party or by which it is bound and does not effect the acceleration of any obligation of the Lessor;

- (g) The Lessor shall upon request, promptly furnish the Bank in writing with all information requested with respect to all or any of the leases;
- (h) Subject to the rights of a Lessee under a lease, the Bank may from time to time inspect all or any Financed Vehicles, wherever located;
- (i) The Lessor shall keep its books and records in good order and its accounts in accordance with generally accepted accounting principles and permit the Bank inspection of such books and records as may relate to the Financed Vehicles at all reasonable times;
- (j) The Lessor shall furnish copies of its audited financial statements to the Bank within 120 days of the end of its fiscal year;
- (k) The Lessor shall furnish the Bank with:
 - (i) copies of its current monthly operating statements by the 30th day following month end, signed by the Lessor's officer attesting to the correctness of the said statements, and
 - (ii) a copy of the monthly aged, lease receivables listing;
- (l) The Bank may conduct independent collateral examinations in its discretion, of the books and records of the Lessor which relate to the Financed Vehicles and at such time or times, the Lessor will provide the Bank with an aged list of lease receivables. The Lessor shall afford the Bank such reasonable access to its books and records as may be required so as to permit the Bank to conduct such examinations, such examinations shall be at no cost to the Lessor;
- (m) The Lessor will obtain and maintain proper insurance coverage with respect to each Financed Vehicle held in inventory for lease or resale and will maintain a back-up insurance policy to cover instances where a Lessee's insurance coverage has lapsed. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
- (n) The Lessor hereby warrants and agrees that:
 - (i) all laws relating to each lease and to the leasing of the Financed Vehicles shall be complied with,
 - (ii) each lease will represent a genuine transaction and will be

enforceable in accordance with its terms against each Lessee,

- (iii) the Financed Vehicles shall be delivered to and accepted by the Lessee named in the lease relating thereto,
 - (iv) each Lease will correctly and fully describe the Financed Vehicles leased thereunder and the obligations and name of the Lessee, and
 - (v) the Lessor will register a financing statement under the Personal Property Security Act in respect of each lease which contains an option to purchase the Financed Vehicle or in respect of which such an option exists, such financing statement to be registered within 10 days of the date of execution of the lease.
 - (o) The Lessor shall keep and shall require each Lessee to keep the Financed Vehicles in a state of good repair.
 - (p) The Lessor shall cause each Lessee to obtain and maintain proper insurance coverage with respect to each Financed Vehicle. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
4. All amounts now or hereafter advanced by the Bank to the Lessor will be repayable by the Lessor to the Bank at any time in the Bank's discretion.
5. Subject to the right of the Bank to demand payment at any prior time in its discretion, the Lessor may arrange to pay any loan described in any Proceeds Request in instalments to be payable in the amounts and at the times set out in the Proceeds Request. In such case, the Lessor agrees that in respect of the prepayment of any principal amount owing pursuant to any instrument securing an advance, the Lessor will pay to the Bank a prepayment premium equal to 3 % of the amount prepaid, unless:
- (a) the related lease is terminated by mutual consent of the Lessor and the Lessee,
 - (b) the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
 - (c) the Financed Vehicle is destroyed or in the opinion of the Bank is rendered unsuitable for further leasing,
 - (d) the Financed Vehicle has been used in daily rental service for at least twelve months, or

- (e) the prepayment is made pursuant to the Lessee's default.

The Lessor acknowledges that the Bank will rely upon specified instalment payments in arranging its own internal financing arrangements and that the foregoing prepayment provisions are reasonable.

- 6. Subject to the right of the Bank to demand payment at any prior time in its discretion, the amount advanced by the Bank pursuant to a Proceeds Request shall immediately become due and payable if, without the Bank's written consent:

- (i) any lease attached to such Proceeds Requests expires, is cancelled, is rescinded or otherwise terminates,
- (ii) any Financed Vehicle referred to in such Proceeds Request is materially damaged, sold, exchanged or otherwise disposed of,
- (iii) the rights or other obligations of a Lessee under any lease attached to such Proceeds Request are assigned to or assumed by any other person,
- (iv) the insurance coverage or any part thereof required by the Bank or under any of the leases attached to such Proceeds Request are cancelled, lapse or otherwise terminate, or
- (v) a Lessee breaches any other covenant of a lease attached to such Proceeds Request.

- 7. Each of the following events or conditions shall, for the purposes of this Security Agreement, be a default:

- (a) if the Lessor fails to pay the Bank any amount owing to the Bank hereunder or under any Proceeds Request;
- (b) if the Lessor fails to perform or observe any condition, covenant, agreement, undertaking or other provision contained either in this Security Agreement or in any other agreement now or hereafter existing between it and the Bank;
- (c) if a petition or application therefore is made or filed by or against the Lessor under any bankruptcy or insolvency legislation or the Lessor makes an assignment for the benefit of its creditors or a proposal or proposed commercial arrangement under any such legislation or becomes insolvent;
- (d) if winding up, liquidation, dissolution or receivership proceedings are commenced by, against or with respect to the Lessor or all or

any of its property, or if a resolution is passed for the Lessor's winding up, liquidation or dissolution;

- (e) if a receiver, receiver/manager, custodian or other person with similar powers is appointed in respect of the Lessor or all or any of its property or if an execution or similar process is filed, registered levied or enforced against all or any of its property in which a security interest has been given hereby, or if all of a substantial part of the Lessor's property or if all or any of the Financed Vehicles or security interests given pursuant to the Agreement are seized or taken possession of under any judicial process or pursuant to any encumbrance or by a landlord or otherwise;
- (f) if any of the representations or warranties set out in paragraph 3 hereof is false, or
- (g) if the Lessor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not.

8. Without prejudice to the Bank's rights and remedies, following any default hereunder, all unpaid amounts shall become immediately due and be payable without notice or demand and the Bank shall have all rights and remedies of a secured party under the Personal Property Security Act. In addition, and notwithstanding, any of the provisions of the Personal Property Security Act, it is agreed that in the event of any default:

- (a) subject to the rights or any Lessee under a lease, the Bank may without liability for rent or other charges or costs or damages, take possession of any Financed Vehicle in any lawful manner,
- (b) in connection with taking or keeping possession or moving, assembling, packing, disposing of, shipping or otherwise dealing with all or any of the Financed Vehicles, the Bank may, without liability for rent, other charges or costs or damages, use and fully enjoy all or any of the Financed Vehicles and may, for the purposes set out herein, enter the Lessor's lands and premises,
- (c) the Bank may, after giving any notice required by applicable law, sell, lease, exchange or otherwise dispose of all or any of the Financed Vehicles or any of the other collateral in which a security interest has been given hereby,
- (d) the Bank may, after giving any notice required by applicable law and either in its own name or that of the Lessor, collect, obtain payment of, sue or otherwise deal with all or any of the proceeds in

any lawful manner,

- (e) the proceeds of any disposition or dealing under subsections c) and d) of this paragraph 8 shall be applied firstly to the expenses of taking and keeping possession of, repairing, processing, insuring, storing, preparing for disposition, disposing of, collecting, obtaining payment of, suing or otherwise dealing with all or any of the collateral in which a security interest has been given hereby, including legal expenses on a solicitor and his client basis, and secondly, to any part or parts of the indebtedness to the Bank; any part of such indebtedness unpaid after such application shall continue to be immediately due and payable,
 - (f) the Bank may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with proceeds, sureties and debtors of the Lessor (including Lessees) and others and with any liens, and the Financed Vehicles as the Bank thinks necessary or advisable without affecting the Lessor's liability with respect to the indebtedness or the effectiveness of this Agreement,
 - (g) the Bank may appoint by instrument in writing, a receiver or receivers of the collateral in which a security interest is granted hereby or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employees of the Bank or not, and the Bank may remove any receiver so appointed and appoint another; or may apply by proceedings in any Court of competent jurisdiction for the appointment of a receiver for the sale of any such collateral. Any such receiver so appointed shall have power to take possession of such collateral or any part thereof and to borrow money required for its maintenance, preservation or protection, and to sell, lease or otherwise dispose of the whole or any part of the collateral on such terms and conditions and in such manner as such receiver shall determine. In exercising any powers, any such receiver shall act as agent for the Lessor and the Bank shall not be responsible for his actions.
9. The Lessor shall give further assurances and do, execute and perform all such acts, deeds, documents and things and obtain all permits, licenses and approvals as may be necessary to enable the Bank to have the full benefit of all rights and remedies herein specified.
10. (a) The security interests created hereby shall be in addition to and not in substitution for any other lien, charge or encumbrance now or hereafter held by the Bank.
- (b) This Security Agreement shall be binding upon and inure to the benefit of

the parties hereto and their respective heirs, successors and assigns and shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

- (c) The Lessor agrees that the Bank shall not have nor assume any obligations under a lease and the Lessor shall perform and continue to perform its obligations pursuant to each lease.
11. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or extend any time for payment of any indebtedness of the Lessor to the Bank.
12. Notices under this agreement shall be in writing and may be left at the address indicated below of such party or sent by registered mail to such party at such address or shall be served personally upon any employee, officer or director of such party and shall be conclusively considered to have been and received on the earliest of:
- (i) the leaving of such notice at such address.
 - (ii) the 5th business day of the Bank following the deposit of such notice by prepaid registered post, and
 - (iii) such personal service:
- Address for the Bank:
- Ontario Automotive Financial Services
Centre
155 Rexdale Boulevard 4th Floor
Rexdale, Ontario
M9W 5Z8
- Address for the Lessor: 2150 Dunwin Drive, Unit 1
Mississauga, Ontario
L5L 1C7
- Attention: Chief Operating Officer and
Chief Financial Officer
13. The Bank may waive any default by the Lessor under this Security Agreement; provided that no such waiver by the Bank shall extend to or affect any subsequent default or the rights of the Bank resulting therefrom.
14. Any provision hereof contrary to applicable law shall be amended to be permitted by applicable law and if such amendment is not possible, such provisions shall

be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions hereof.

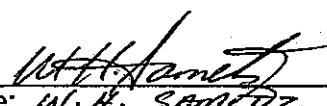
15. All rights and remedies herein are cumulative and not alternative and if more than one person executes this Security Agreement as Lessor, the obligations of such persons to the Bank hereunder shall be both joint and several.
16. In construing this Security Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include corporations and partnerships.
17. The Lessor acknowledges receipt of an executed copy of this Security Agreement.

IN WITNESS WHEREOF the parties have executed this Security Agreement.

LESSOR: **BODKIN FINANCIAL CORPORATION**

Per: 
Name: John Mitchell
Title: Secretary

BANK OF MONTREAL

Per: 
Name: W. H. SAMPEDO
Title: RELATIONSHIP MANAGER

AMENDMENT AND ACKNOWLEDGMENT AGREEMENT

AMONG: Bank of Montreal ("BMO")

AND: Bodkin Financial Corporation ("Financial")

WHEREAS BMO and Financial entered into a Term Sheet dated March 8, 2004 (the "Original Term Sheet") and pursuant to the Original Term Sheet BMO and Financial entered into, among other agreements, an Operating Loan Agreement, a FirstBank Fixed Rate Lending Agreement and an Undertaking, each dated as of May 3, 2004 (collectively, the "Loan Documents").

AND WHEREAS Financial delivered certain security documents in favour of BMO, each dated as of May 3, 2004, including, without limitation, a general security agreement, a movable hypothec and a Security Agreement re Leased Vehicles, as security for any and all obligations of Financial to BMO, including obligations pursuant to the Original Term Sheet and the Loan Documents (collectively, the "Security").

AND WHEREAS BMO and Financial entered into an amended and restated Term Sheet dated September 13, 2005 (the "Amended Term Sheet").

AND WHEREAS pursuant to articles of amalgamation effective December 15, 2005, Financial and 551520 Ontario Limited amalgamated (the "Amalgamation") to form Bodkin Financial Corporation (the "Amalgamated Corporation").

AND WHEREAS the Amalgamated Corporation wishes to acknowledge and confirm the indebtedness owing by it to BMO, as the corporation continuing from the Amalgamation, and the continuing effect of all outstanding security documentation including, but not limited to, the Security, notwithstanding the Amalgamation.

NOW THEREFORE this agreement witnesses that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Amalgamated Corporation acknowledges and agrees as follows:

1. The Amalgamated Corporation hereby acknowledges, confirms and agrees that all of the indebtedness, liabilities and obligations of Financial to BMO incurred prior to the Amalgamation, whether direct, indirect or contingent and howsoever and wheresoever incurred, including without limitation, the indebtedness, liabilities and obligations pursuant to the Original Term Sheet, the Amended Term Sheet, the Loan Documents and the Security, are the indebtedness, liabilities and obligations of the Amalgamated Corporation, as the corporation continuing from the Amalgamation. For purposes of greater certainty, the Amalgamated Corporation covenants and agrees that it shall be bound by, observe, perform and fulfill each and every covenant, proviso, obligation, term and condition by which Financial is

bound (including pursuant to the Amended Term Sheet, the Loan Documents and the Security) and undertakes and agrees to faithfully perform and discharge each and every obligation and liability of Financial (including pursuant to the Amended Term Sheet, the Loan Documents and the Security), all as though the Amalgamated Corporation had been originally bound by each such obligation and liability in the place of Financial.

2. Each of the Amalgamated Corporation and BMO hereby agree that each of the Loan Documents and the Security is hereby amended by deleting any reference to the Original Term Sheet and substituting therefore the Amended Term Sheet, as the same may be amended, restated, varied or altered from time to time.
3. The Amalgamated Corporation hereby undertakes and agrees that it will not, without the prior written consent of BMO, declare or pay any dividends on the Class B Preferred shares issued in the capital of the Amalgamated Corporation nor will it redeem or retract such shares.
4. The Amalgamated Corporation hereby confirms that (i) all liens and security interests granted to BMO by Financial and 551520 Ontario Limited shall continue notwithstanding the Amalgamation (including pursuant to the Security) and (ii) such liens and security interests shall attach to all of the undertaking, property, assets and rights of the Amalgamated Corporation
5. Each of the Amended Term Sheet, the Loan Documents and the Security constitutes a legal, valid and binding obligation of the Amalgamated Corporation, enforceable against the Amalgamated Corporation in accordance with its terms.

DATED as of the 12th day of December, 2005.

BODKIN FINANCIAL CORPORATION,
a company formed by the amalgamation
of Bodkin Financial Corporation and
551520 Ontario


Per: 

Name:

Title:

I have authority to bind the Corporation.

BANK OF MONTREAL

Per: 
Name: **W. H. SAMETZ**
Title: **RELATIONSHIP MANAGER**

Per: _____
Name: _____
Title: _____

I/We have authority to bind the bank.

TAB E

**THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

SECURITY AGREEMENT

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the Personal Property Security Act (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations:

Please see Schedule A attached hereto.

2. The Debtor hereby

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above;
- (d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom; and
- (e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained).

For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for the greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any scheduled attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.
4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.
5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor to the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligation of the Debtor to the Bank.
6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.
7. The Debtor shall all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and reasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.
8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.
9. The debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:
 - (a) the Debtor shall default under any of the Obligations;

- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be bona fide opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead, or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) As a whole or in various lots:
- (b) By a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) By private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security

Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.
13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or rights resulting therefrom.
14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.
15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.
16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment or any indebtedness or liability of the Debtor to the Bank.
17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.
18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.
19. In construing this Security Agreement, terms herein shall have the same meaning as defined in the Personal Property Security Act (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating hereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

Insert date of
execution

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor as of the
3rd day of May, 2004.

BODKIN CAPITAL CORPORATION

Per: 

Name:

John Mitchell, Secretary

To be signed by Debtor; if
Debtor is a corporation ensure
signatures are authorized and if
Debtor is a corporation with a
corporate seal, affix Corporate
Seal; Debtor's name should be
typed

SCHEDULE A

List of Locations where Assets Located

The assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located in numerous locations throughout Canada. All other assets of the Debtor and all books and records in respect of the Debtor and the assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located at the following address:

2150 Dunwin Drive, Unit 1
Mississauga, Ontario, L5L 1C7

Doc #339672v1

SECURITY AGREEMENT

The undersigned (hereinafter called the "Debtor") hereby enters into this Security Agreement with Bank of Montreal (hereinafter called the "Bank") for valuable consideration and as security for the repayment of all present and future indebtedness of the Debtor to the Bank and interest thereon and for the payment and discharge of all other present and future liabilities and obligations, direct or indirect, absolute or contingent, of the Debtor to the Bank (all such indebtedness, interest, liabilities and obligations being hereinafter collectively called the "Obligations"). This Security Agreement is entered into pursuant to and is governed by the Personal Property Security Act (Ontario) insofar as it affects personal property located in Ontario.

1. The Debtor hereby represents and warrants to the Bank that it has assets at the following locations:

Please see Schedule A attached hereto.

2. The Debtor hereby

- (a) mortgages and charges to the Bank as and by way of a fixed and specific mortgage and charge, and grants to the Bank a security interest in, all its present and future equipment and any proceeds therefrom, including, without limiting the generality of the foregoing, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired or in respect of which the Debtor has rights now or in the future and any equipment specifically listed or otherwise described in any Schedule hereto;
- (b) mortgages and charges to the Bank, and grants to the Bank a security interest in, all its present and future inventory and any proceeds therefrom, including, without limiting the generality of the foregoing, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
- (c) assigns, transfers and sets over to the Bank and grants to the Bank a security interest in, all its present and future intangibles and any proceeds therefrom, including, without limiting the generality of the foregoing, all its present and future accounts, accounts receivable, contract rights and other choses in action of every kind or nature now due or hereafter to become due, including insurance rights arising from or out of the assets referred to in sub-clauses (a) and (b) above;
- (d) grants, mortgages, charges, transfers and assigns to the Bank a security interest in, all its present and future chattel papers, documents of title, instruments, money and securities, and any proceeds therefrom; and
- (e) charges in favour of the Bank as and by way of a floating charge its undertaking and all its property and assets, real and personal, moveable or immoveable, of whatsoever nature and kind, both present and future (other than property and assets hereby validly assigned or subjected to a specific mortgage and charge and to the exceptions hereinafter contained).

For the purposes of this Security Agreement, the equipment, inventory, intangibles, undertaking and all other property and assets of the Debtor referred to in this clause 2 are hereinafter sometimes collectively called the "Collateral". Without limiting the generality of the description of Collateral as set out in this clause 2, and for the greater certainty, the Collateral shall include all present and future personal property of the Debtor of the type described in any scheduled attached hereto. The Debtor agrees that it shall promptly advise the Bank in writing of any acquisition of personal property which is not of the type herein described. The Debtor agrees to execute and deliver from time to time, at its own expense, amendments to this Security Agreement or additional security agreements, which may be reasonably required by the Bank to ensure attachment of security interests in such personal property.

3. The Collateral is on the date hereof primarily situate or located at the location(s) set out in clause 1 hereof but may from time to time be located at other premises of the Debtor. The Collateral may also be located at other places while in transit to and from such locations and premises; and the Collateral may from time to time be situate or located at any other place when on lease or consignment to any lessee or consignee from the Debtor.
4. It is hereby declared that the last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor, is hereby or shall be excepted out of the mortgages, charges and security interests hereby created, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term of years, for the time being demised, as aforesaid upon trust to assign and dispose of the same as any purchaser of such term of years shall direct. There shall also be excluded from the security created by this Security Agreement any property of the Debtor that constitutes consumer goods for the personal use of the Debtor.
5. The Debtor shall not without the prior written consent of the Bank sell or dispose of any of the Collateral other than that described in sub-clause (b) of clause 2 above which may be sold only in the ordinary course of business and for the purpose of carrying on the same; and if the amounts of any of the intangibles referred to in sub-clause (c) of clause 2 above or any proceeds arising from the Collateral described in sub-clauses (a) and (b) of clause 2 above shall be paid to the Debtor, the Debtor shall receive the same as agent of the Bank and forthwith pay over the same to the Bank. The Debtor shall not without the prior written consent of the Bank create any liens upon or assign or transfer as security or pledge or hypothecate as security or create a security interest in the Collateral except to the Bank. The Debtor agrees that the Bank may require any account debtor to the Debtor to make payment to the Bank and the Bank may take control of any proceeds referred to in sub-clauses (a), (b) and (c) of clause 2 hereof and may hold all amounts received from any account debtors and any proceeds as cash collateral as part of the Collateral and as security for the Obligation of the Debtor to the Bank.
6. The Debtor shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all and singular every such further acts, deeds, transfers, assignments, security agreements and assurances as the Bank may reasonably require for the better granting, transferring, assigning, charging, setting over, assuring and confirming unto the Bank the property and assets hereby mortgaged and charged or subjected to security interests or intended so to be or which the Debtor may hereafter become bound to mortgage, charge, transfer, assign or subject to a security interest in favour of the Bank and for the better accomplishing and effectuating of this Security Agreement.
7. The Debtor shall all times have and maintain insurance over the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly and reasonably pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions.
8. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request, including lists of inventory and equipment and lists of accounts and accounts receivable showing the amounts owing upon each account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the account.
9. The debtor shall be in default under this Security Agreement upon the occurrence of any one of the following events:
 - (a) the Debtor shall default under any of the Obligations;

- (b) the Debtor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not and including any covenant or undertaking set out in any Schedule to this Security Agreement;
- (c) an execution or any other process of any court shall become enforceable against the Debtor or a distress or analogous process shall be levied upon the property of the Debtor or any part thereof;
- (d) the Debtor shall become insolvent or commit an act of bankruptcy, or make an assignment in bankruptcy or a bulk sale of its assets or a bankruptcy petition shall be filed or presented against the Debtor and not be bona fide opposed by the Debtor;
- (e) the Debtor shall cease to carry on business.

10. Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Bank or not, and the Bank may remove any receiver or receivers so appointed and appoint another or others in his or their stead, or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Debtor. Any such receiver or receivers so appointed shall have power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Debtor, and to further charge the Collateral in priority to the security constituted by this Security Agreement as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as he shall determine. In exercising any powers any such receiver or receivers shall act as agent or agents for the Debtor and the Bank shall not be responsible for his or their actions.

In addition, the Bank may enter upon the applicable premises and lease or sell the whole or any part or parts of the Collateral. The Debtor agrees that considering the nature of that part of the Collateral that is not perishable it will be commercially reasonable to sell such part of the Collateral:

- (a) As a whole or in various lots:
- (b) By a public sale or call for tenders by advertising such sale once in a local daily newspaper at least seven (7) days before such sale; and
- (c) By private sale after the receipt by the Bank of at least two offers from prospective purchasers who may include persons related to or affiliated with the Debtor or other customers of the Bank.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Bank in its sole discretion may seem advantageous and such sale may take place whether or not the Bank has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Bank shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Security Agreement includes a receiver and manager.

11. Any and all payments made in respect of the Obligations from time to time and moneys realized from any securities held therefor (including moneys realized on any enforcement of this Security

Agreement) may be applied to such part or parts of the Obligations as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit.

12. The Debtor agrees to pay all reasonable expenses, including solicitor's fees and disbursements and the remuneration of any receiver appointed hereunder, incurred by the Bank in the preparation, perfection and enforcement of this Security Agreement, including all expenses incurred by the Bank and its agents to put into place and confirm the priority of any security interest in this Security Agreement and the payment of such expenses shall be secured hereby.
13. The Bank may waive any default herein referred to; provided always that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default or rights resulting therefrom.
14. The Debtor acknowledges that value has been given, that the Debtor has rights in the Collateral and that the parties have not agreed to postpone the time for attachment of any security interest in this Security Agreement.
15. The security hereof is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Obligations of the Debtor shall at any time or from time to time be fully satisfied or paid.
16. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment or any indebtedness or liability of the Debtor to the Bank.
17. This Security Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the Debtor and the Bank.
18. This Security Agreement is a security agreement within the meaning of the Personal Property Security Act (Ontario) and does not constitute an acknowledgement of any particular indebtedness or liability of the Debtor to the Bank.
19. In construing this Security Agreement, terms herein shall have the same meaning as defined in the Personal Property Security Act (Ontario), unless the context otherwise requires. The word "Debtor", the personal pronoun "it" or "its" and any verb relating hereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used depending upon whether the Debtor is one or more individuals, corporations or partnerships and, if more than one, shall apply and be binding upon each of them severally. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation and, where the Debtor is a partnership, any new partnership resulting from the admission of new partners or any other change in the Debtor, including, without limiting the generality of the foregoing, the death of any or all of the partners.

Insert date of
execution

IN WITNESS WHEREOF this Security Agreement has been executed by the Debtor as of the
3rd day of May, 2004.

BODKIN LEASING CORPORATION

To be signed by Debtor; if
Debtor is a corporation ensure
signatures are authorized and if
Debtor is a corporation with a
Corporate seal, affix Corporate
Seal; Debtor's name should be
typed

Per:
Name.


John Mitchell, Secretary

SCHEDULE A

List of Locations where Assets Located

The assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located in numerous locations throughout Canada. All other assets of the Debtor and all books and records in respect of the Debtor and the assets of the Debtor which are the subject matter of leases in which the Debtor is the Lessor are located at the following address:

2150 Dunwin Drive, Unit 1
Mississauga, Ontario, L5L 1C7

Doc #339672v1



1. OBLIGATIONS SECURED

- 1.1 The hypothec in Section 2 of this Agreement is granted to secure all obligations, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person, of the undersigned (the "Customer") towards BANK OF MONTREAL (the "Bank") under or pursuant to this Agreement and all other obligations described in Section 9.1.
- 1.2 All obligations secured by this hypothec are herein called the "Secured Obligations", and such expression includes interest, costs and damages.

2. HYPOTHEC

- 2.1 For good and valuable consideration, the Customer hypothecates in favour of the Bank all present and future property of the Customer, both corporeal and incorporeal, now owned or hereafter acquired by the Customer, including without limitation the following:
- (a) all present and future machinery and equipment of the Customer, including, without limitation, all tools, implements, furniture and vehicles;
 - (b) all present and future inventory of the Customer including, without limitation, all property in stock, movable property in reserve, raw materials, goods in process, finished products, animals, wares, as well as any other property held for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease, or for use in providing a service by the Customer in the ordinary course of operation of its enterprise;
 - (c) all present and future claims of the Customer including, without limitation, all customer accounts, accounts receivable, rights of action, demands, judgments, contract rights, amounts on deposit, proceeds of sale, assignment or lease of any property, rights or titles, and any indemnities payable under any contract of insurance whether or not such insurance is on property forming part of the Hypothecated Property (as hereinafter defined), the whole which are now due or which may become due to the Customer, together with all judgments and all other rights, benefits, guarantees and securities for the said claims which are now or may hereafter exist in favour of the Customer, and together with all books and accounts, client lists, client records, client files, titles, letters, invoices, papers and documents in any way evidencing or relating to all or any of the claims;
 - (d) all present and future Securities (as defined in Section 8.4(f)), instruments, bills of lading, warehouse receipts, documents or other evidences of title of the Customer;
 - (e) all present and future goodwill, trademarks, patents and patent rights, copyrights, inventions, other intangible property, monies, agreements and rights under agreements of the Customer, and all its present and future undertaking; and
 - (f) all client lists, client records, client files, titles, documents, records, receipts, invoices and accounts evidencing any of the aforesaid Hypothecated Property or relating thereto including, without limitation, computer disks, tapes and related data processing media and rights of the Customer to retrieve same from third parties;
- (all such present and future property being herein called the "Hypothecated Property"), for the amount specified in Section 9.2, with interest from the date hereof at the rate per annum specified in Section 9.2.

- 2.2 The following property, to the extent not already included in the description in Section 2.1, is also covered by the hypothec constituted by this Agreement:
- (a) the proceeds of any sale, assignment, lease or other disposition of the property described in Section 2.1, any claim resulting from such a sale, assignment, lease or other disposition, as well as any property acquired in

replacement thereof (it being understood that this clause shall not be interpreted as permitting the Customer to dispose of the Hypothecated Property in contravention of the provisions of this Agreement);

- (b) any indemnity or proceeds of expropriation payable in respect of the Hypothecated Property;
- (c) any rights attached to the Hypothecated Property, as well as the fruits and revenues thereof;
- (d) if the property described in Section 2.1 includes Securities, all other Securities issued or received in substitution, renewal, addition or replacement of Securities, or issued or received on the purchase, redemption, conversion, cancellation or other transformation of Securities or issued or received by way of dividend or otherwise to holders of Securities.

3. REPRESENTATIONS

The Customer represents to the Bank as follows:

- 3.1 The Customer is the sole owner of the Hypothecated Property which now exists and all the Hypothecated Property is free and clear of all prior claims, hypothecs, security interests and other rights in favour of any other person, except for those, if any, disclosed by the Customer to the Bank in Section 9.3; the Customer is in possession of all the Hypothecated Property.
- 3.2 The Hypothecated Property is situated in the Province of Quebec, except for the property, if any, described in Section 9.4.
- 3.3 None of the Hypothecated Property is destined to be used in more than one jurisdiction, including more than one Province of Canada or State of the United States of America, except for such property, if any, as is described with the applicable jurisdictions set forth in Section 9.5.
- 3.4 The domicile of the Customer (its head office if the Customer is a legal person or its domicile, if the Customer is a natural person) is situated at the address indicated in Section 9.6.
- 3.5 If this hypothec is on a universality of property or a movable represented by a bill of lading, the Customer is carrying on an enterprise.
- 3.6 None of the Hypothecated Property is incorporated in an immovable property; and none of the Hypothecated Property is permanently physically attached or joined to an immovable property, except for Hypothecated Property which has not lost its individuality and which is used for the operation of the Customer's enterprise or the pursuit of the Customer's activities.
- 3.7 If the Customer is a natural person, the Customer operates one or more enterprises and the Hypothecated Property is property of such enterprise or enterprises.
- 3.8 If the Customer is a natural person, the date of birth of the Customer is that set forth in Section 9.7.

4. COVENANTS

The Customer agrees with the Bank as follows:

- 4.1 The Customer will notify the Bank in writing without delay of any change in its name, its domicile or in the contents or accuracy of the representations made in Section 3.
- 4.2 The Customer shall pay when due all duties, levies, taxes, charges and licence and other fees it may owe at any time under any fiscal law as well as those relating to the Hypothecated Property and any claim which may rank prior to or *pari passu* with the hypothec constituted by this Agreement. The Customer shall submit to the Bank on request receipts or other evidence establishing such payment; and the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate as to amounts owing by the Customer at the end of such month under any fiscal law.

- 4.3 The Customer shall, at its expense, insure the Hypothecated Property and shall keep the Hypothecated Property at all times insured against all risks of loss or damage caused by theft or fire and against any other risk that is customary to insure against or that a prudent administrator would insure against or that the Bank shall require, the whole for the full insurable value of the Hypothecated Property, and on such terms and with responsible insurers as are satisfactory to the Bank. Each policy of insurance shall provide that such insurance shall not be cancelled for any reason or allowed to lapse without 30 days prior written notice to the Bank. The Bank is hereby designated the beneficiary of the indemnities payable in virtue of each policy of insurance (except as regards public liability) and the Customer shall cause such designation to be inscribed on the policies. If requested by the Bank, the Customer shall assign to the Bank the policies or indemnities payable thereunder or ensure each policy contains a mortgage clause satisfactory to the Bank. The Customer will deliver to the Bank on request evidence of payment of premiums and a copy of each policy and, at least 30 days prior to the expiry or termination of a policy, the Customer shall deliver to the Bank a copy of its renewal or of its replacement. If the Customer fails to procure or maintain any such insurance, the Bank shall have the right, but not the obligation, to effect such insurance in its name or in the Customer's name, and any premiums or other expenses paid or incurred by the Bank in so doing shall forthwith be due and payable by the Customer to the Bank, with interest as provided in Section 4.14.
- 4.4 The Customer shall do all things, shall deliver to the Bank all documents and information and shall sign all documents necessary in order that the hypothec constituted by this Agreement shall have full effect and shall remain at all times opposable to third parties and in order that the Bank may fully exercise its rights hereunder.
- 4.5 The Customer shall protect, use and keep in good repair the Hypothecated Property and shall carry out its activities in such manner as to preserve the value of the Hypothecated Property, and shall permit the Bank, its officers or agents access to its premises to inspect or evaluate the same; the Customer shall comply with the requirements of laws and regulations applicable to the carrying on of its enterprise and to its ownership, possession and use of the Hypothecated Property, including laws and regulations in respect of the environment.
- 4.6 The Customer will maintain such books and accounting records as a prudent administrator would maintain in relation to its enterprise and to the Hypothecated Property and it will permit the Bank to examine them and obtain copies of them.
- 4.7 The Customer shall not create or permit to exist any prior claim, hypothec, security interest or other right in favour of a third party on or which may affect the Hypothecated Property, other than those which the Bank shall have previously agreed to in writing.
- 4.8 The Customer shall not sell, assign or lease the Hypothecated Property, without the Bank's prior written consent. Notwithstanding the foregoing, the Customer may, for so long as it is not in default hereunder, sell or lease its inventory in the ordinary course of the carrying on of its enterprise.
- 4.9 Except with the prior written consent of the Bank, the Customer will not change the use, destination or nature of the Hypothecated Property, nor the place where the Hypothecated Property is located; nor will it permit the Hypothecated Property to be incorporated in an immovable property or to be permanently physically attached or joined to an immovable property, unless such Hypothecated Property does not lose its individuality and unless such Hypothecated Property is and will continue to be used for the operation of the Customer's enterprise or the pursuit of the Customer's activities. If the Customer is a legal person, the Customer will maintain its corporate existence in good standing and will not amalgamate with any other person, nor will it commence any proceedings with a view to its liquidation, without the prior written consent of the Bank.
- 4.10 If the Hypothecated Property includes inventory, the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate of the value of its inventory (calculated at the lesser of cost or market value) at the end of each such month.
- 4.11 The Customer will furnish to the Bank any information which the Bank may reasonably request in respect of the Customer's operations or the Hypothecated Property or to verify if the Customer is in compliance with its covenants and obligations contained in this Agreement, including lists of equipment, copies of financial statements and other documents. The Customer will immediately advise the Bank in writing of any fact or occurrence of such nature as may adversely affect the value of the Hypothecated Property or the financial situation of the Customer or which constitutes, or with the giving of notice or lapse of time or both, would constitute a default under this Agreement.
- 4.12 The Customer will reimburse to the Bank, all fees and expenses, legal or otherwise, and costs of registration in respect of this Agreement and in respect of all renewal titles, renewals of registration, notices of address,

acquittances and discharges in connection therewith and any appraisal or valuation fee and the costs of a copy of these presents, of all applications for registration and related documents.

- 4.13 The Customer will forthwith reimburse to the Bank, all extrajudicial fees and disbursements which the Bank may pay or for the payment of which it may become liable, in seeking to obtain the fulfilment of any obligations or undertakings of the Customer under this Agreement or to exercise its rights or preserve, protect or render opposable its interests the whole up to an amount not exceeding 20% of the amount of the hypothec specified in Section 9.2.
- 4.14 Except as otherwise provided hereunder, all fees, costs and expenses incurred by the Bank and reimbursable by the Customer under this Agreement, shall bear interest from the date the costs, fees or expenses are incurred by the Bank at an annual rate equal to the Prime Rate of the Bank in effect from time to time, plus 3% per annum. All such costs, fees and expenses incurred or paid by the Bank, with interest thereon, shall form part of the Secured Obligations. The Prime Rate of the Bank is the floating annual rate of interest established from time to time by the Bank as the base rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is that set forth in Section 9.8.
- 4.15 The Customer will duly perform and comply with all its obligations to the Bank, whether under this Agreement or any other agreement, instrument or other document.

5. CERTAIN RIGHTS AND RESPONSIBILITIES OF THE BANK

- 5.1 The Bank may from time to time, at the expense of the Customer, inspect the Hypothecated Property or proceed to the evaluation of the Hypothecated Property. For this purpose, the Customer will permit the Bank access to the locations where the Hypothecated Property may be found, as well as to the places of business of the Customer, and the Customer will permit the Bank to examine the accounting records and documents relating to the Hypothecated Property.
- 5.2 In the event the Customer fails to observe or perform any of its obligations or undertakings under this Agreement, the Bank may, but shall not be obliged to, perform the same and any fees, costs or expenses incurred in so doing shall be forthwith due and payable by the Customer to the Bank, with interest as provided in Section 4.14, and shall form part of the Secured Obligations.
- 5.3 If the Hypothecated Property includes Securities, the Bank may, but shall not be obliged to, cause the Bank, or its nominee, to be registered as holder of such Securities and exercise all rights in respect of such Securities, including any right to vote, any right of conversion or any right of redemption.
- 5.4 If the Customer has surrendered the Hypothecated Property to the Bank or its agent or if the Bank or its agent has possession of the Hypothecated Property, neither the Bank nor its agent shall have any obligation to continue the use, operation or exploitation of the Hypothecated Property or to continue the use for which it is ordinarily destined or to exercise the rights pertaining to the Hypothecated Property or to make it productive; and the Customer agrees that the Bank or its agent may do such acts and things, or refrain from doing such acts and things, as the Bank or its agent, in its sole discretion, deems appropriate for the exercise of its rights and the realization and enforcement of its hypothec.
- 5.5 The Customer hereby irrevocably constitutes the Bank or any manager or other officer of the Bank, its agent, with the power of substitution, in order to perform any act and sign any document, including any transfer or endorsement of Securities, necessary or useful to the exercise of the rights conferred on the Bank pursuant to this Agreement.
- 5.6 All sums received by the Bank in the exercise of its rights arising under or pursuant to this Agreement or by law may be held by the Bank as Hypothecated Property, or may be applied by the Bank to the payment of the Secured Obligations, whether or not then exigible. The Bank may impute and apply such sums towards payment of any part or parts of the Secured Obligations as the Bank in its sole discretion shall decide, and may change any imputation or application as it sees fit.
- 5.7 The exercise by the Bank of any of its rights shall not prevent it from exercising any other rights it may have arising from this Agreement or by law; the rights of the Bank are cumulative and not alternative. The Bank may waive any provision hereof or any default, however the non-exercise by the Bank of any of its rights or any such waiver shall

not constitute a renunciation of the exercise thereafter of such right or a renunciation of any other provision or of any other default. The Bank may exercise the rights arising from this Agreement without having exercised its rights against any other person liable for the payment of the Secured Obligations, or any of them, and without having realized any other security securing the Secured Obligations.

- 5.8 The Bank is only required to exercise reasonable prudence and diligence in the exercise of its rights or the fulfilment of its obligations and, in any event, the Bank is only responsible for its intentional or gross fault. The Customer shall indemnify the Bank for any losses or expenses incurred by the Bank, or damages claimed against the Bank, for which the Bank is not so responsible.
- 5.9 The Bank may delegate to any other person, or be represented by any other person in, the exercise of its rights or the fulfilment of its obligations resulting from this Agreement; the Bank may furnish to such person any information which the Bank may have concerning the Customer or the Hypothecated Property.
- 5.10 The rights conferred on the Bank in virtue of this Section 5 may be exercised by the Bank either before or after a default by the Customer under the terms of this Agreement.

6. PROVISIONS APPLICABLE IF THE HYPOTHECATED PROPERTY INCLUDES A CLAIM OR CLAIMS

- 6.1 If the Hypothecated Property includes a claim or claims, whether present or future, then in addition to the other provisions of this Agreement, the following provisions shall apply in respect of such claims:
 - (a) The Bank shall have the right to collect (i) the capital falling due of, and any revenues of, any such claim which is or represents the indemnity payable under any insurance policy in respect of loss or damage to the Hypothecated Property and (ii) the capital or revenues of any claim described or of the nature specified in Section 9.9.
 - (b) The Bank authorizes the Customer to collect when due the capital falling due of, and any revenues of, any other claim until the Bank shall have given the Customer a notice withdrawing such authorization, whereupon the Bank shall immediately have the right to collect all such capital and revenues. This notice of withdrawal may be given at any time, either before or after a default under this Agreement, and may be given from time to time in respect of all or any part or parts of the claims.
 - (c) Upon notice by the Bank to the Customer, which may be given either before or after a default under this Agreement or before or after the notice of withdrawal referred to in Section 6.1(b), the Bank may require the Customer to immediately remit to the Bank all or a specified part of capital and revenues of claims received by the Customer or to deposit the same in one or more designated bank accounts or otherwise to hold, deal with or deliver such capital and revenues, all on such terms and conditions as the Bank may specify in such notice.
 - (d) The Bank shall have no obligation to exercise any rights in respect of any claims nor to enforce or to see to payment of the same, whether by legal action or otherwise. The Bank may give acquittances for any sums it collects and may, but shall not be obligated to, realize any of the claims, grant extensions, grant releases, accept compositions, renounce and generally deal with the claims, and any guarantees or security therefor, and take any action to preserve, protect or secure such claims, at such times and in such manner as it deems advisable at its sole discretion, without notice to or the consent of the Customer, and without incurring any liability therefor and without any obligation to render any account in respect thereof or in respect of moneys collected, other than to remit to the Customer any amounts collected over and above the Secured Obligations.
 - (e) Any amounts collected by the Customer or by the Bank or deposited in a designated bank account shall form part of the Hypothecated Property and be subject to the hypothec hereof. The Bank may apply any amounts received by it towards payment of all or part of the Secured Obligations, even if not yet exigible, including any fees, costs or other expenses incurred by the Bank and secured hereunder and may impute and apply such amounts towards payment of any part or parts of the Secured Obligations as the Bank at its sole discretion shall decide, and may change any imputation or application as it sees fit.
 - (f) The Customer waives any obligation the Bank may have to inform the Customer of any irregularity in the payment of any sums exigible on any claims or rights.

- (g) The Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a detailed list of all claims owing to the Customer at the end of each such month including the name and address of the debtor of each claim, the amount due, the aging of the account and any security held by the Customer for any claim.
- (h) The Customer shall from time to time on request of the Bank deliver to the Bank, or permit the Bank or its officers or agents access to its premises for the purpose of examining and making copies of, all books and accounts, letters, invoices, papers, agreements, negotiable instruments, documents of title, hypothecs and other documents in any way evidencing or relating to all or any of the claims forming part of the Hypothecated Property and shall otherwise assist the Bank and furnish the Bank with all information which may assist the Bank in the collection thereof.
- (i) If this Agreement constitutes a hypothec on a universality of claims, the hypothec on the claims extends also to any claim under any insurance contract on the other property of the Customer.
- (j) The Customer represents that none of the claims which now exist is itself secured by a hypothec or guaranteed by a third party in favour of the Customer, except for those, if any, described in Section 9.10, and the Customer undertakes to notify the Bank immediately of any claim, present or future, which hereafter is or becomes secured by a hypothec or guaranteed by a third party in favour of the Customer and to deliver to the Bank the agreements or other documents now or hereafter constituting or evidencing the same.

7. DEFAULTS AND RECOURSES

7.1 The Customer will be in default under this Agreement in each of the following cases:

- (a) if any of the Secured Obligations is not paid when due; or
- (b) if any of the representations made in Section 3 or in any other declaration or certificate by the Customer delivered to the Bank is untrue or incorrect in a material respect; or
- (c) if the Customer does not perform or observe any of its covenants or undertakings contained in this Agreement or any obligation of the Customer required by law; or
- (d) if the Customer is in default under any other agreement, undertaking or evidence of indebtedness in favour of the Bank, including any agreement, undertaking or evidence of indebtedness referred to in Section 1 or Section 9.1, or under any other hypothec or security interest affecting the Hypothecated Property; or
- (e) if the Customer ceases to carry on its enterprise, or gives a notice of intention to make a proposal to or makes a proposal to its creditors or makes an assignment for the benefit of its creditors, or becomes insolvent or bankrupt or if any action is commenced or notice given with a view to rendering or declaring the Customer insolvent or bankrupt; or
- (f) if any action is taken or notice given by or against the Customer with a view to the winding up, liquidation, reorganization or relief or protection from creditors of the Customer including under the *Bankruptcy and Insolvency Act (Canada)* or the *Companies' Creditors Arrangement Act (Canada)*; or the Customer amalgamates with any other person; or
- (g) if any creditor of the Customer commences any action or gives any notice with a view to exercising any rights or remedies on or with respect to the Hypothecated Property, including by way of seizure, prior notice, notice of crystallization, taking possession or otherwise, or if a sequestrator is appointed; or
- (h) if any guarantor of the Secured Obligations, or any part thereof, dies or gives notice to the Bank of termination of a guarantee, or if a default occurs under any other hypothec in favour of the Bank securing all or any part of the Secured Obligations.

7.2 Without limiting the Bank's right to demand payment or to exercise any other right it may have under any other agreement or instrument, if the Customer is in default, any obligation the Bank may have to grant further credit or make further advances to the Customer shall terminate and/or all the obligations of the Customer to the Bank which are not then due shall thereupon be and become forthwith due and payable, in each case if the Bank so elects and

without any notice or demand by the Bank. If the Customer is in default, the Bank may also exercise any and all of the rights and recourses it may have hereunder or by law and it may enforce and realize its hypothec, including the exercise of the hypothecary rights in virtue of the *Civil Code of Quebec*. If the Bank gives the Customer a prior notice of its intention to exercise a hypothecary right the Customer shall, and shall cause any other person in possession of Hypothecated Property to, immediately voluntarily surrender it to the Bank.

7.3 In order to enforce and realize its hypothec, the Bank may use, at the Customer's expense, the premises where the Hypothecated Property is located, as well as the other property of the Customer. If the Hypothecated Property includes inventory, the Bank may complete the manufacture of such inventory and do any other thing necessary or useful to bring them to sale.

7.4 The Customer agrees that with respect to any sale by the Bank of any of the Hypothecated Property in the exercise of its rights, it will be commercially reasonable to sell such Hypothecated Property:

(a) together or separately;

(b) by auction or by call for tenders by advertising such sale or call for tenders once in a local daily newspaper at least seven (7) days prior to such sale or close of call for tenders; and

(c) by sale by agreement after receipt by the Bank of at least two (2) offers from prospective purchasers, who may include persons related to or affiliated with the Customer or other customers of the Bank.

Any such sale may be on such terms as to credit or otherwise and as to upset price or reserve bid or price as the Bank at its sole discretion may deem advantageous, and the Customer agrees that the price received at any such sale shall constitute a commercially reasonable price.

The foregoing shall not preclude the Bank from agreeing to or making any sale in any other manner not prohibited by law nor shall it be interpreted to mean that only a sale made in conformity with the foregoing is commercially reasonable or that only the price received at a sale made in conformity with the foregoing shall constitute a commercially reasonable price.

8. GENERAL PROVISIONS

8.1 The hypothec constituted by this Agreement is in addition to and not in substitution for any other hypothec or security interest held by the Bank.

8.2 This hypothec constitutes continuing security which shall continue in effect notwithstanding any payment from time to time in whole or in part of the Secured Obligations and shall subsist until cancelled by the Bank, notwithstanding the extinction of the Secured Obligations. This hypothec may, by agreement between the Bank and the Customer from time to time, secure obligations in addition to or in substitution of the Secured Obligations.

8.3 In each of the cases set forth in Section 7.1 the Customer shall be in default by the mere lapse of time, without any notice putting the Customer in default being required.

8.4 When used in this Agreement:

(a) The expression "Hypothecated Property" shall mean all or any part of the Hypothecated Property.

- (b) The expression "Customer" shall include the Customer, its successors and assigns, including any person resulting from the amalgamation of the Customer with any other person, and, in the case of a natural person, shall include its successors, executors, liquidators, heirs and legal representatives; this clause shall not give the Customer the right to assign any of its rights or obligations hereunder to, or to amalgamate with, any other person except as otherwise expressly permitted by this Agreement.
- (c) The expression "Bank" shall include the Bank, and its successors and assigns, including any person resulting from the amalgamation of the Bank with any other person.
- (d) The expression "Agreement" shall include this Agreement, as it may hereafter be amended, supplemented, modified, renewed, replaced or restated from time to time.
- (e) References to a Section shall refer to Sections in this Agreement.
- (f) The expression "Securities" shall include shares in the capital stock of a legal person; bonds, debentures, bills of exchange, promissory notes, negotiable instruments and other evidence of indebtedness; options or rights in respect of the foregoing; and any other instrument or title generally called or included as a security. The expression "Securities" shall mean any or all Securities.
- (g) The expression "property" shall include property, titles and rights.

- 8.5 If several persons are designated as "Customer", each of them is solidarily responsible for the obligations of the Customer set forth in this Agreement; each Customer is responsible both individually and together with each other Customer for all the obligations of the Customer to the Bank.
- 8.6 The rights conferred on the Bank by this Agreement shall inure to the benefit of each successor of the Bank. The Bank shall have the right to assign all or any part of the Secured Obligations to any other person and this Agreement shall inure to the benefit of any such assignee in respect of all, or such part, of the Secured Obligations which have been so assigned.
- 8.7 All notices, demands and other communications to the Customer may be given to it at its address set forth in Section 9.11 or at any other address which the Customer notifies the Bank in writing. Such notices, demands and communications shall be sufficiently given if delivered personally or by messenger or sent by ordinary mail or telecopier to the Customer at such address and shall be considered received by the Customer, (i) if delivered personally or by messenger, when delivered, (ii) if sent by mail, four (4) working days after mailing and (iii) if sent by telecopier, when sent. The Customer hereby elects domicile at such address for the purposes of receiving notices, demands or other communications and for the service of legal proceedings. If the Bank is unable to locate the Customer at such address, the giving of any notice, demand or other communication or the service of any legal proceeding may be made at the office of the prothonotary of the Superior Court in the district in which the last address of the Customer referred to in the first sentence of this Section is located, at which office in such event the Customer also elects domicile for purposes of giving any notice, demand or other communication or the service of any legal proceeding.
- 8.8 If this hypothec is given to secure an obligation or obligations of a person other than the Customer (such other person being called the "Borrower" in this Section), the Customer hereby
 - (a) waives the benefit of discussion and the benefit of division and agrees that the Bank shall not be obliged to exhaust its recourses against the Borrower or the Customer or any other person or against any other security or securities it may hold before enforcing or realizing on or otherwise dealing with the Hypothecated Property in such manner as the Bank considers desirable;
 - (b) agrees that the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and release any security, may abstain from taking security or publishing or perfecting security, make accept compositions from, may otherwise change the terms of the obligations or any security or guarantees therefor and may otherwise deal with the Borrower and any other persons and any securities as the Bank sees fit, without in any manner affecting or reducing the hypothec hereof; and
 - (c) agrees that all obligations of the Borrower to the Customer or any of them, if more than one, are hereby postponed to the obligations of the Borrower to the Bank and all moneys received thereon by the Customer or

any of them, if more than one, shall be received on behalf of the Bank and shall be immediately paid over to the Bank.

- 8.9 The Secured Obligations described in Section 9.1 are governed by one or more separate agreements with the Bank which determine, among other things, the amount of credit available to the Customer from the Bank and the interest rate or interest rates and other fees or charges which the Customer is required to pay on credit obtained under such agreement(s). The amount of the hypothec and rate of interest referred to in Section 2.1 and specified in Section 9.2 is the amount with the rate of interest for which the Hypothecated Property is hypothecated. The Bank is entitled to interest on credit made available under the said separate agreements at the rate or rates determined under the separate agreement applicable to the credit and not at the rate specified in Section 9.2, unless such rate is identical to the rate determined under the separate agreement applicable to the credit. The amount of credit which the Customer is entitled to obtain from the Bank is determined by the applicable separate agreement and not by the amount of the hypothec specified in Section 9.2 of this Agreement.
- 8.10 The Customer shall sign, acknowledge or deliver all such further instruments and shall do such other things as the Bank may reasonably require to give effect to or to confirm or protect the hypothec hereby constituted, including necessary inscriptions for the registration, renewal, carrying over or conservation of the hypothec and notices to third parties.
- 8.11 If any clause in this Agreement, or part thereof, is null or otherwise unenforceable, without effect, or deemed unwritten, the remaining provisions shall continue in full force and effect.
- 8.12 This Agreement is governed by and construed in accordance with the laws of the Province of Quebec.
- 8.13 The parties hereby confirm their express wish that this Agreement and all documents, agreements or notices directly or indirectly related hereto be drawn up in the English language. Les parties reconnaissent leur volonté expresse que le présent contrat ainsi que tous les documents, conventions ou avis s'y rattachant directement ou indirectement soient rédigés en langue anglaise.

This Agreement continues at Section 9, entitled «Information Referred to above in this Agreement».

This is a continuation of the movable hypothec - universality Bank of Montreal form LF 503 (Que).

9. INFORMATION REFERRED TO ABOVE IN THIS AGREEMENT

- 9.1 In addition to the obligations described in Section 1.1, this hypothec is granted to secure all obligations, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person:
- (a) of the Customer towards the Bank under or pursuant to a term sheet dated as of March 8, 2004, and all renewals, extensions, replacements, supplements or amendments thereto, or substitutions therefor or restatements thereof;
 - (b) of _____ to the Bank under or pursuant to _____, and all renewals, extensions, replacements, supplements or amendments thereto, or substitutions therefor or restatements thereof; and
 - (c) all other such obligations, present and future, of the Customer to the Bank.
- 9.2 The amount of the hypothec and the rate of interest referred to in Section 2.1:
thirty-five million dollars (\$35,000,000) with interest at the rate of twenty-five percent (25%) per annum.
- 9.3 Prior claims, hypothecs, security interests and other rights, referred to in Section 3.1:
N/A _____
- 9.4 Hypothecated Property situated outside the Province of Quebec and jurisdiction [city and province or state] where it is situated, referred to in Section 3.2:
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon, Northwest Territories and Nunavit
- 9.5 Hypothecated Property destined to be used in more than one jurisdiction and the applicable jurisdiction, referred to in Section 3.3:
_motor vehicles_____
- 9.6 Domicile of the Customer, referred to in Section 3.4:
2150 Dunwin Drive
Unit 1
Mississauga, Ontario

- 9.7 Date of birth of a Customer who is a natural person, referred to in Section 3.8:
N/A
- 9.8 The Prime Rate on the date of this Agreement, referred to in Section 4.14, is 3.750 % per annum.
- 9.9 Claims which the Bank shall have the right to collect referred to in Section 6.1(a):
N/A _____
- 9.10 Claims secured by a hypothec or guaranteed by a third party in favour of the Customer, referred to in Section 6.1(j).
[Describe claim, name of grantor of hypothec or of guarantor, date of hypothec or guarantee, nature of hypothec and registration numbers with respect to the hypothec, if any]:
N/A

9.11 Address of the Customer for notices, referred to in Section 8.7:
See 9.6 above

Signed at Toronto this 29th day of April, 2004.

Witnesses:

Customer: BODKIN CAPITAL CORPORATION

By:


John Mitchell, Secretary

By: _____

Accepted and agreed
BANK OF MONTREAL

By:



Doc#339675

1. OBLIGATIONS SECURED

- 1.1 The hypothec in Section 2 of this Agreement is granted to secure all obligations, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person, of the undersigned (the "Customer") towards BANK OF MONTREAL (the "Bank") under or pursuant to this Agreement and all other obligations described in Section 9.1.
- 1.2 All obligations secured by this hypothec are herein called the "Secured Obligations", and such expression includes interest, costs and damages.

2. HYPOTHEC

- 2.1 For good and valuable consideration, the Customer hypothecates in favour of the Bank all present and future property of the Customer, both corporeal and incorporeal, now owned or hereafter acquired by the Customer, including without limitation the following:
- (a) all present and future machinery and equipment of the Customer, including, without limitation, all tools, implements, furniture and vehicles;
 - (b) all present and future inventory of the Customer including, without limitation, all property in stock, movable property in reserve, raw materials, goods in process, finished products, animals, wares, as well as any other property held for sale, lease or processing in the manufacture or transformation of property intended for sale, for lease, or for use in providing a service by the Customer in the ordinary course of operation of its enterprise;
 - (c) all present and future claims of the Customer including, without limitation, all customer accounts, accounts receivable, rights of action, demands, judgments, contract rights, amounts on deposit, proceeds of sale, assignment or lease of any property, rights or titles, and any indemnities payable under any contract of insurance whether or not such insurance is on property forming part of the Hypothecated Property (as hereinafter defined), the whole which are now due or which may become due to the Customer, together with all judgments and all other rights, benefits, guarantees and securities for the said claims which are now or may hereafter exist in favour of the Customer, and together with all books and accounts, client lists, client records, client files, titles, letters, invoices, papers and documents in any way evidencing or relating to all or any of the claims;
 - (d) all present and future Securities (as defined in Section 8.4(f)), instruments, bills of lading, warehouse receipts, documents or other evidences of title of the Customer;
 - (e) all present and future goodwill, trademarks, patents and patent rights, copyrights, inventions, other intangible property, monies, agreements and rights under agreements of the Customer, and all its present and future undertaking; and
 - (f) all client lists, client records, client files, titles, documents, records, receipts, invoices and accounts evidencing any of the aforesaid Hypothecated Property or relating thereto including, without limitation, computer disks, tapes and related data processing media and rights of the Customer to retrieve same from third parties;
- (all such present and future property being herein called the "Hypothecated Property"), for the amount specified in Section 9.2, with interest from the date hereof at the rate per annum specified in Section 9.2.
- 2.2 The following property, to the extent not already included in the description in Section 2.1, is also covered by the hypothec constituted by this Agreement:
- (a) the proceeds of any sale, assignment, lease or other disposition of the property described in Section 2.1, any claim resulting from such a sale, assignment, lease or other disposition, as well as any property acquired in

replacement thereof (it being understood that this clause shall not be interpreted as permitting the Customer to dispose of the Hypothecated Property in contravention of the provisions of this Agreement);

- (b) any indemnity or proceeds of expropriation payable in respect of the Hypothecated Property;
- (c) any rights attached to the Hypothecated Property, as well as the fruits and revenues thereof;
- (d) if the property described in Section 2.1 includes Securities, all other Securities issued or received in substitution, renewal, addition or replacement of Securities, or issued or received on the purchase, redemption, conversion, cancellation or other transformation of Securities or issued or received by way of dividend or otherwise to holders of Securities.

3. REPRESENTATIONS

The Customer represents to the Bank as follows:

- 3.1 The Customer is the sole owner of the Hypothecated Property which now exists and all the Hypothecated Property is free and clear of all prior claims, hypothecs, security interests and other rights in favour of any other person, except for those, if any, disclosed by the Customer to the Bank in Section 9.3; the Customer is in possession of all the Hypothecated Property.
- 3.2 The Hypothecated Property is situated in the Province of Quebec, except for the property, if any, described in Section 9.4.
- 3.3 None of the Hypothecated Property is destined to be used in more than one jurisdiction, including more than one Province of Canada or State of the United States of America, except for such property, if any, as is described with the applicable jurisdictions set forth in Section 9.5.
- 3.4 The domicile of the Customer (its head office if the Customer is a legal person or its domicile, if the Customer is a natural person) is situated at the address indicated in Section 9.6.
- 3.5 If this hypothec is on a universality of property or a movable represented by a bill of lading, the Customer is carrying on an enterprise.
- 3.6 None of the Hypothecated Property is incorporated in an immovable property; and none of the Hypothecated Property is permanently physically attached or joined to an immovable property, except for Hypothecated Property which has not lost its individuality and which is used for the operation of the Customer's enterprise or the pursuit of the Customer's activities.
- 3.7 If the Customer is a natural person, the Customer operates one or more enterprises and the Hypothecated Property is property of such enterprise or enterprises.
- 3.8 If the Customer is a natural person, the date of birth of the Customer is that set forth in Section 9.7.

4. COVENANTS

The Customer agrees with the Bank as follows:

- 4.1 The Customer will notify the Bank in writing without delay of any change in its name, its domicile or in the contents or accuracy of the representations made in Section 3.
- 4.2 The Customer shall pay when due all duties, levies, taxes, charges and licence and other fees it may owe at any time under any fiscal law as well as those relating to the Hypothecated Property and any claim which may rank prior to or *pari passu* with the hypothec constituted by this Agreement. The Customer shall submit to the Bank on request receipts or other evidence establishing such payment; and the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate as to amounts owing by the Customer at the end of such month under any fiscal law.

- 4.3 The Customer shall, at its expense, insure the Hypothecated Property and shall keep the Hypothecated Property at all times insured against all risks of loss or damage caused by theft or fire and against any other risk that is customary to insure against or that a prudent administrator would insure against or that the Bank shall require, the whole for the full insurable value of the Hypothecated Property, and on such terms and with responsible insurers as are satisfactory to the Bank. Each policy of insurance shall provide that such insurance shall not be cancelled for any reason or allowed to lapse without 30 days prior written notice to the Bank. The Bank is hereby designated the beneficiary of the indemnities payable in virtue of each policy of insurance (except as regards public liability) and the Customer shall cause such designation to be inscribed on the policies. If requested by the Bank, the Customer shall assign to the Bank the policies or indemnities payable thereunder or ensure each policy contains a mortgage clause satisfactory to the Bank. The Customer will deliver to the Bank on request evidence of payment of premiums and a copy of each policy and, at least 30 days prior to the expiry or termination of a policy, the Customer shall deliver to the Bank a copy of its renewal or of its replacement. If the Customer fails to procure or maintain any such insurance, the Bank shall have the right, but not the obligation, to effect such insurance in its name or in the Customer's name, and any premiums or other expenses paid or incurred by the Bank in so doing shall forthwith be due and payable by the Customer to the Bank, with interest as provided in Section 4.14.
- 4.4 The Customer shall do all things, shall deliver to the Bank all documents and information and shall sign all documents necessary in order that the hypothec constituted by this Agreement shall have full effect and shall remain at all times opposable to third parties and in order that the Bank may fully exercise its rights hereunder.
- 4.5 The Customer shall protect, use and keep in good repair the Hypothecated Property and shall carry out its activities in such manner as to preserve the value of the Hypothecated Property, and shall permit the Bank, its officers or agents access to its premises to inspect or evaluate the same; the Customer shall comply with the requirements of laws and regulations applicable to the carrying on of its enterprise and to its ownership, possession and use of the Hypothecated Property, including laws and regulations in respect of the environment.
- 4.6 The Customer will maintain such books and accounting records as a prudent administrator would maintain in relation to its enterprise and to the Hypothecated Property and it will permit the Bank to examine them and obtain copies of them.
- 4.7 The Customer shall not create or permit to exist any prior claim, hypothec, security interest or other right in favour of a third party on or which may affect the Hypothecated Property, other than those which the Bank shall have previously agreed to in writing.
- 4.8 The Customer shall not sell, assign or lease the Hypothecated Property, without the Bank's prior written consent. Notwithstanding the foregoing, the Customer may, for so long as it is not in default hereunder, sell or lease its inventory in the ordinary course of the carrying on of its enterprise.
- 4.9 Except with the prior written consent of the Bank, the Customer will not change the use, destination or nature of the Hypothecated Property, nor the place where the Hypothecated Property is located; nor will it permit the Hypothecated Property to be incorporated in an immovable property or to be permanently physically attached or joined to an immovable property, unless such Hypothecated Property does not lose its individuality and unless such Hypothecated Property is and will continue to be used for the operation of the Customer's enterprise or the pursuit of the Customer's activities. If the Customer is a legal person, the Customer will maintain its corporate existence in good standing and will not amalgamate with any other person, nor will it commence any proceedings with a view to its liquidation, without the prior written consent of the Bank.
- 4.10 If the Hypothecated Property includes inventory, the Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a certificate of the value of its inventory (calculated at the lesser of cost or market value) at the end of each such month.
- 4.11 The Customer will furnish to the Bank any information which the Bank may reasonably request in respect of the Customer's operations or the Hypothecated Property or to verify if the Customer is in compliance with its covenants and obligations contained in this Agreement, including lists of equipment, copies of financial statements and other documents. The Customer will immediately advise the Bank in writing of any fact or occurrence of such nature as may adversely affect the value of the Hypothecated Property or the financial situation of the Customer or which constitutes, or with the giving of notice or lapse of time or both, would constitute a default under this Agreement.
- 4.12 The Customer will reimburse to the Bank, all fees and expenses, legal or otherwise, and costs of registration in respect of this Agreement and in respect of all renewal titles, renewals of registration, notices of address,

acquittances and discharges in connection therewith and any appraisal or valuation fee and the costs of a copy of these presents, of all applications for registration and related documents.

- 4.13 The Customer will forthwith reimburse to the Bank, all extrajudicial fees and disbursements which the Bank may pay or for the payment of which it may become liable, in seeking to obtain the fulfilment of any obligations or undertakings of the Customer under this Agreement or to exercise its rights or preserve, protect or render opposable its interests the whole up to an amount not exceeding 20% of the amount of the hypothec specified in Section 9.2.
- 4.14 Except as otherwise provided hereunder, all fees, costs and expenses incurred by the Bank and reimbursable by the Customer under this Agreement, shall bear interest from the date the costs, fees or expenses are incurred by the Bank at an annual rate equal to the Prime Rate of the Bank in effect from time to time, plus 3% per annum. All such costs, fees and expenses incurred or paid by the Bank, with interest thereon, shall form part of the Secured Obligations. The Prime Rate of the Bank is the floating annual rate of interest established from time to time by the Bank as the base rate it will use to determine the rate of interest payable to the Bank by borrowers from the Bank in Canadian dollars in Canada and designated by the Bank as its Prime Rate. The Prime Rate on the date hereof is that set forth in Section 9.8.
- 4.15 The Customer will duly perform and comply with all its obligations to the Bank, whether under this Agreement or any other agreement, instrument or other document.

5. CERTAIN RIGHTS AND RESPONSIBILITIES OF THE BANK

- 5.1 The Bank may from time to time, at the expense of the Customer, inspect the Hypothecated Property or proceed to the evaluation of the Hypothecated Property. For this purpose, the Customer will permit the Bank access to the locations where the Hypothecated Property may be found, as well as to the places of business of the Customer, and the Customer will permit the Bank to examine the accounting records and documents relating to the Hypothecated Property.
- 5.2 In the event the Customer fails to observe or perform any of its obligations or undertakings under this Agreement, the Bank may, but shall not be obliged to, perform the same and any fees, costs or expenses incurred in so doing shall be forthwith due and payable by the Customer to the Bank, with interest as provided in Section 4.14, and shall form part of the Secured Obligations.
- 5.3 If the Hypothecated Property includes Securities, the Bank may, but shall not be obliged to, cause the Bank, or its nominee, to be registered as holder of such Securities and exercise all rights in respect of such Securities, including any right to vote, any right of conversion or any right of redemption.
- 5.4 If the Customer has surrendered the Hypothecated Property to the Bank or its agent or if the Bank or its agent has possession of the Hypothecated Property, neither the Bank nor its agent shall have any obligation to continue the use, operation or exploitation of the Hypothecated Property or to continue the use for which it is ordinarily destined or to exercise the rights pertaining to the Hypothecated Property or to make it productive; and the Customer agrees that the Bank or its agent may do such acts and things, or refrain from doing such acts and things, as the Bank or its agent, in its sole discretion, deems appropriate for the exercise of its rights and the realization and enforcement of its hypothec.
- 5.5 The Customer hereby irrevocably constitutes the Bank or any manager or other officer of the Bank, its agent, with the power of substitution, in order to perform any act and sign any document, including any transfer or endorsement of Securities, necessary or useful to the exercise of the rights conferred on the Bank pursuant to this Agreement.
- 5.6 All sums received by the Bank in the exercise of its rights arising under or pursuant to this Agreement or by law may be held by the Bank as Hypothecated Property, or may be applied by the Bank to the payment of the Secured Obligations, whether or not then exigible. The Bank may impute and apply such sums towards payment of any part or parts of the Secured Obligations as the Bank in its sole discretion shall decide, and may change any imputation or application as it sees fit.
- 5.7 The exercise by the Bank of any of its rights shall not prevent it from exercising any other rights it may have arising from this Agreement or by law; the rights of the Bank are cumulative and not alternative. The Bank may waive any provision hereof or any default, however the non-exercise by the Bank of any of its rights or any such waiver shall

not constitute a renunciation of the exercise thereafter of such right or a renunciation of any other provision or of any other default. The Bank may exercise the rights arising from this Agreement without having exercised its rights against any other person liable for the payment of the Secured Obligations, or any of them, and without having realized any other security securing the Secured Obligations.

- 5.8 The Bank is only required to exercise reasonable prudence and diligence in the exercise of its rights or the fulfilment of its obligations and, in any event, the Bank is only responsible for its intentional or gross fault. The Customer shall indemnify the Bank for any losses or expenses incurred by the Bank, or damages claimed against the Bank, for which the Bank is not so responsible.
- 5.9 The Bank may delegate to any other person, or be represented by any other person in, the exercise of its rights or the fulfilment of its obligations resulting from this Agreement; the Bank may furnish to such person any information which the Bank may have concerning the Customer or the Hypothecated Property.
- 5.10 The rights conferred on the Bank in virtue of this Section 5 may be exercised by the Bank either before or after a default by the Customer under the terms of this Agreement.

6. PROVISIONS APPLICABLE IF THE HYPOTHECATED PROPERTY INCLUDES A CLAIM OR CLAIMS

- 6.1 If the Hypothecated Property includes a claim or claims, whether present or future, then in addition to the other provisions of this Agreement, the following provisions shall apply in respect of such claims:
 - (a) The Bank shall have the right to collect (i) the capital falling due of, and any revenues of, any such claim which is or represents the indemnity payable under any insurance policy in respect of loss or damage to the Hypothecated Property and (ii) the capital or revenues of any claim described or of the nature specified in Section 9.9.
 - (b) The Bank authorizes the Customer to collect when due the capital falling due of, and any revenues of, any other claim until the Bank shall have given the Customer a notice withdrawing such authorization, whereupon the Bank shall immediately have the right to collect all such capital and revenues. This notice of withdrawal may be given at any time, either before or after a default under this Agreement, and may be given from time to time in respect of all or any part or parts of the claims.
 - (c) Upon notice by the Bank to the Customer, which may be given either before or after a default under this Agreement or before or after the notice of withdrawal referred to in Section 6.1(b), the Bank may require the Customer to immediately remit to the Bank all or a specified part of capital and revenues of claims received by the Customer or to deposit the same in one or more designated bank accounts or otherwise to hold, deal with or deliver such capital and revenues, all on such terms and conditions as the Bank may specify in such notice.
 - (d) The Bank shall have no obligation to exercise any rights in respect of any claims nor to enforce or to see to payment of the same, whether by legal action or otherwise. The Bank may give acquittances for any sums it collects and may, but shall not be obligated to, realize any of the claims, grant extensions, grant releases, accept compositions, renounce and generally deal with the claims, and any guarantees or security therefor, and take any action to preserve, protect or secure such claims, at such times and in such manner as it deems advisable at its sole discretion, without notice to or the consent of the Customer, and without incurring any liability therefor and without any obligation to render any account in respect thereof or in respect of moneys collected, other than to remit to the Customer any amounts collected over and above the Secured Obligations.
 - (e) Any amounts collected by the Customer or by the Bank or deposited in a designated bank account shall form part of the Hypothecated Property and be subject to the hypothec hereof. The Bank may apply any amounts received by it towards payment of all or part of the Secured Obligations, even if not yet exigible, including any fees, costs or other expenses incurred by the Bank and secured hereunder and may impute and apply such amounts towards payment of any part or parts of the Secured Obligations as the Bank at its sole discretion shall decide, and may change any imputation or application as it sees fit.
 - (f) The Customer waives any obligation the Bank may have to inform the Customer of any irregularity in the payment of any sums exigible on any claims or rights.

- (g) The Customer shall deliver to the Bank within 10 days after the end of each month, or as otherwise agreed in writing between the Bank and the Customer, a detailed list of all claims owing to the Customer at the end of each such month including the name and address of the debtor of each claim, the amount due, the aging of the account and any security held by the Customer for any claim.
- (h) The Customer shall from time to time on request of the Bank deliver to the Bank, or permit the Bank or its officers or agents access to its premises for the purpose of examining and making copies of, all books and accounts, letters, invoices, papers, agreements, negotiable instruments, documents of title, hypothecs and other documents in any way evidencing or relating to all or any of the claims forming part of the Hypothecated Property and shall otherwise assist the Bank and furnish the Bank with all information which may assist the Bank in the collection thereof.
- (i) If this Agreement constitutes a hypothec on a universality of claims, the hypothec on the claims extends also to any claim under any insurance contract on the other property of the Customer.
- (j) The Customer represents that none of the claims which now exist is itself secured by a hypothec or guaranteed by a third party in favour of the Customer, except for those, if any, described in Section 9.10, and the Customer undertakes to notify the Bank immediately of any claim, present or future, which hereafter is or becomes secured by a hypothec or guaranteed by a third party in favour of the Customer and to deliver to the Bank the agreements or other documents now or hereafter constituting or evidencing the same.

7. DEFAULTS AND RECOURSES

7.1 The Customer will be in default under this Agreement in each of the following cases:

- (a) if any of the Secured Obligations is not paid when due; or
- (b) if any of the representations made in Section 3 or in any other declaration or certificate by the Customer delivered to the Bank is untrue or incorrect in a material respect; or
- (c) if the Customer does not perform or observe any of its covenants or undertakings contained in this Agreement or any obligation of the Customer required by law; or
- (d) if the Customer is in default under any other agreement, undertaking or evidence of indebtedness in favour of the Bank, including any agreement, undertaking or evidence of indebtedness referred to in Section 1 or Section 9.1, or under any other hypothec or security interest affecting the Hypothecated Property; or
- (e) if the Customer ceases to carry on its enterprise, or gives a notice of intention to make a proposal to or makes a proposal to its creditors or makes an assignment for the benefit of its creditors, or becomes insolvent or bankrupt or if any action is commenced or notice given with a view to rendering or declaring the Customer insolvent or bankrupt; or
- (f) if any action is taken or notice given by or against the Customer with a view to the winding up, liquidation, reorganization or relief or protection from creditors of the Customer including under the *Bankruptcy and Insolvency Act (Canada)* or the *Companies' Creditors Arrangement Act (Canada)*; or the Customer amalgamates with any other person; or
- (g) if any creditor of the Customer commences any action or gives any notice with a view to exercising any rights or remedies on or with respect to the Hypothecated Property, including by way of seizure, prior notice, notice of crystallization, taking possession or otherwise, or if a sequestrator is appointed; or
- (h) if any guarantor of the Secured Obligations, or any part thereof, dies or gives notice to the Bank of termination of a guarantee, or if a default occurs under any other hypothec in favour of the Bank securing all or any part of the Secured Obligations.

7.2 Without limiting the Bank's right to demand payment or to exercise any other right it may have under any other agreement or instrument, if the Customer is in default, any obligation the Bank may have to grant further credit or make further advances to the Customer shall terminate and/or all the obligations of the Customer to the Bank which are not then due shall thereupon be and become forthwith due and payable, in each case if the Bank so elects and

without any notice or demand by the Bank. If the Customer is in default, the Bank may also exercise any and all of the rights and recourses it may have hereunder or by law and it may enforce and realize its hypothec, including the exercise of the hypothecary rights in virtue of the *Civil Code of Quebec*. If the Bank gives the Customer a prior notice of its intention to exercise a hypothecary right the Customer shall, and shall cause any other person in possession of Hypothecated Property to, immediately voluntarily surrender it to the Bank.

7.3 In order to enforce and realize its hypothec, the Bank may use, at the Customer's expense, the premises where the Hypothecated Property is located, as well as the other property of the Customer. If the Hypothecated Property includes inventory, the Bank may complete the manufacture of such inventory and do any other thing necessary or useful to bring them to sale.

7.4 The Customer agrees that with respect to any sale by the Bank of any of the Hypothecated Property in the exercise of its rights, it will be commercially reasonable to sell such Hypothecated Property:

- (a) together or separately;
- (b) by auction or by call for tenders by advertising such sale or call for tenders once in a local daily newspaper at least seven (7) days prior to such sale or close of call for tenders; and
- (c) by sale by agreement after receipt by the Bank of at least two (2) offers from prospective purchasers, who may include persons related to or affiliated with the Customer or other customers of the Bank.

Any such sale may be on such terms as to credit or otherwise and as to upset price or reserve bid or price as the Bank at its sole discretion may deem advantageous, and the Customer agrees that the price received at any such sale shall constitute a commercially reasonable price.

The foregoing shall not preclude the Bank from agreeing to or making any sale in any other manner not prohibited by law nor shall it be interpreted to mean that only a sale made in conformity with the foregoing is commercially reasonable or that only the price received at a sale made in conformity with the foregoing shall constitute a commercially reasonable price.

8. GENERAL PROVISIONS

8.1 The hypothec constituted by this Agreement is in addition to and not in substitution for any other hypothec or security interest held by the Bank.

8.2 This hypothec constitutes continuing security which shall continue in effect notwithstanding any payment from time to time in whole or in part of the Secured Obligations and shall subsist until cancelled by the Bank, notwithstanding the extinction of the Secured Obligations. This hypothec may, by agreement between the Bank and the Customer from time to time, secure obligations in addition to or in substitution of the Secured Obligations.

8.3 In each of the cases set forth in Section 7.1 the Customer shall be in default by the mere lapse of time, without any notice putting the Customer in default being required.

8.4 When used in this Agreement:

- (a) The expression "Hypothecated Property" shall mean all or any part of the Hypothecated Property.

- (b) The expression "Customer" shall include the Customer, its successors and assigns, including any person resulting from the amalgamation of the Customer with any other person, and, in the case of a natural person, shall include its successors, executors, liquidators, heirs and legal representatives; this clause shall not give the Customer the right to assign any of its rights or obligations hereunder to, or to amalgamate with, any other person except as otherwise expressly permitted by this Agreement.
- (c) The expression "Bank" shall include the Bank, and its successors and assigns, including any person resulting from the amalgamation of the Bank with any other person.
- (d) The expression "Agreement" shall include this Agreement, as it may hereafter be amended, supplemented, modified, renewed, replaced or restated from time to time.
- (e) References to a Section shall refer to Sections in this Agreement.
- (f) The expression "Securities" shall include shares in the capital stock of a legal person; bonds, debentures, bills of exchange, promissory notes, negotiable instruments and other evidence of indebtedness; options or rights in respect of the foregoing; and any other instrument or title generally called or included as a security. The expression "Securities" shall mean any or all Securities.
- (g) The expression "property" shall include property, titles and rights.

8.5 If several persons are designated as "Customer", each of them is solidarily responsible for the obligations of the Customer set forth in this Agreement; each Customer is responsible both individually and together with each other Customer for all the obligations of the Customer to the Bank.

8.6 The rights conferred on the Bank by this Agreement shall inure to the benefit of each successor of the Bank. The Bank shall have the right to assign all or any part of the Secured Obligations to any other person and this Agreement shall inure to the benefit of any such assignee in respect of all, or such part, of the Secured Obligations which have been so assigned.

8.7 All notices, demands and other communications to the Customer may be given to it at its address set forth in Section 9.11 or at any other address which the Customer notifies the Bank in writing. Such notices, demands and communications shall be sufficiently given if delivered personally or by messenger or sent by ordinary mail or telecopier to the Customer at such address and shall be considered received by the Customer, (i) if delivered personally or by messenger, when delivered, (ii) if sent by mail, four (4) working days after mailing and (iii) if sent by telecopier, when sent. The Customer hereby elects domicile at such address for the purposes of receiving notices, demands or other communications and for the service of legal proceedings. If the Bank is unable to locate the Customer at such address, the giving of any notice, demand or other communication or the service of any legal proceeding may be made at the office of the prothonotary of the Superior Court in the district in which the last address of the Customer referred to in the first sentence of this Section is located, at which office in such event the Customer also elects domicile for purposes of giving any notice, demand or other communication or the service of any legal proceeding.

8.8 If this hypothec is given to secure an obligation or obligations of a person other than the Customer (such other person being called the "Borrower" in this Section), the Customer hereby

- (a) waives the benefit of discussion and the benefit of division and agrees that the Bank shall not be obliged to exhaust its recourses against the Borrower or the Customer or any other person or against any other security or securities it may hold before enforcing or realizing on or otherwise dealing with the Hypothecated Property in such manner as the Bank considers desirable;
- (b) agrees that the Bank may grant time, renewals, extensions, indulgences, releases and discharges to, may take security from and release any security, may abstain from taking security or publishing or perfecting security, make accept compositions from, may otherwise change the terms of the obligations or any security or guarantees therefor and may otherwise deal with the Borrower and any other persons and any securities as the Bank sees fit, without in any manner affecting or reducing the hypothec hereof; and
- (c) agrees that all obligations of the Borrower to the Customer or any of them, if more than one, are hereby postponed to the obligations of the Borrower to the Bank and all moneys received thereon by the Customer or

any of them, if more than one, shall be received on behalf of the Bank and shall be immediately paid over to the Bank.

- 8.9 The Secured Obligations described in Section 9.1 are governed by one or more separate agreements with the Bank which determine, among other things, the amount of credit available to the Customer from the Bank and the interest rate or interest rates and other fees or charges which the Customer is required to pay on credit obtained under such agreement(s). The amount of the hypothec and rate of interest referred to in Section 2.1 and specified in Section 9.2 is the amount with the rate of interest for which the Hypothecated Property is hypothecated. The Bank is entitled to interest on credit made available under the said separate agreements at the rate or rates determined under the separate agreement applicable to the credit and not at the rate specified in Section 9.2, unless such rate is identical to the rate determined under the separate agreement applicable to the credit. The amount of credit which the Customer is entitled to obtain from the Bank is determined by the applicable separate agreement and not by the amount of the hypothec specified in Section 9.2 of this Agreement.
- 8.10 The Customer shall sign, acknowledge or deliver all such further instruments and shall do such other things as the Bank may reasonably require to give effect to or to confirm or protect the hypothec hereby constituted, including necessary inscriptions for the registration, renewal, carrying over or conservation of the hypothec and notices to third parties.
- 8.11 If any clause in this Agreement, or part thereof, is null or otherwise unenforceable, without effect, or deemed unwritten, the remaining provisions shall continue in full force and effect.
- 8.12 This Agreement is governed by and construed in accordance with the laws of the Province of Quebec.
- 8.13 The parties hereby confirm their express wish that this Agreement and all documents, agreements or notices directly or indirectly related hereto be drawn up in the English language. Les parties reconnaissent leur volonté expresse que le présent contrat ainsi que tous les documents, conventions ou avis s'y rattachant directement ou indirectement soient rédigés en langue anglaise.

This Agreement continues at Section 9, entitled «Information Referred to above in this Agreement».

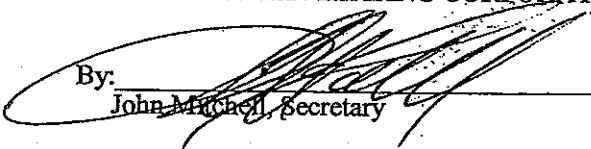
9.11 Address of the Customer for notices, referred to in Section 8.7:
See 9.6 above

Signed at Toronto this 29th day of April, 2004.

Witnesses:

Customer: BODKIN LEASING CORPORATION

By: _____


John Mitchell, Secretary

By: _____

Accepted and agreed
BANK OF MONTREAL

By: _____



Doc#339665

SECURITY AGREEMENT RE: LEASED VEHICLES

THIS AGREEMENT MADE as of this 3rd day of May, 2004.

BETWEEN:

BODKIN CAPITAL CORPORATION,

the "Lessor"

- and -

BANK OF MONTREAL,

the "Bank"

WHEREAS:

- i) the Lessor is a lessor of automobiles, light trucks and other vehicles (collectively, "Vehicles") and in the ordinary course of its business from time to time, leases vehicles to its customers ("Lessees");
- ii) the Lessor has requested the Bank to lend money on the security of Vehicles which are to become the subject of leases to Lessees, and
- iii) the Lessor has agreed to give the Bank security interest in such Vehicles, in the leases between the Lessor and Lessees, in the lease proceeds and in the proceeds of disposition of such Vehicles:

NOW THEREFORE the Lessor hereby enters into this Security Agreement with the Bank for valuable consideration.

1. The Lessor may from time to time request a loan from the Bank by an executed "Lessor's Proceeds Request" (a "Proceeds Request") in the form set out in Appendix A hereto. If the request is accepted by the Bank, the Bank will provide to the Lessor, the requested loan to enable the Lessor to purchase or pay for the Vehicle or Vehicles described therein (all such Vehicles described in all such Proceeds Requests being hereinafter called "Financed Vehicles").
2. As security for the repayment of all loans made by the Bank to the Lessor and all other present and future indebtedness and liability of the Lessor to the Bank and interest thereon, the Lessor hereby grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank, as and by way of a fixed and specific mortgage and charge, and grants to the Bank a continuing security interest in the following collateral:

- (a) all Financed Vehicles currently or hereafter owned or acquired by the Lessor; and
- (b) all leases of Financed Vehicles and all rights, benefits and proceeds of any nature arising out of any Financed Vehicle or any lease of a Financed Vehicle including, without limiting the generality of the foregoing, all lease payments and insurance proceeds receivable in respect of any Financed Vehicle.

The parties hereto intend that the said security interest shall attach to each Financed Vehicle upon the advance of funds to the Lessor by the Bank in accordance with the Proceeds Request.

3. The Lessor represents, warrants and agrees as follows:

- (a) Except for leases permitted hereunder and the security interests granted herein, the Lessor:
 - (i) will immediately use the loan made by the Bank pursuant to a Proceeds Request to acquire a good, free and clear title to the Financed Vehicle described therein, and
 - (ii) will keep all Financed Vehicles free from any lien, mortgage, charge, pledge, security interest or other encumbrance of any kind.
- (b) Title to the Financed Vehicles shall at all times be registered in the name of the Lessor;
- (c) The Lessor shall not lease or otherwise dispose of any or all of the Financed Vehicles without the consent of the Bank provided that the Lessor may lease a Financed Vehicle pursuant to a lease attached to a Proceeds Request;
- (d) Each lease permitted hereunder shall be in the Lessor's form as appended to the Proceeds Request;
- (e) The Lessor shall observe and perform its obligations under each lease and shall not amend, terminate or waive compliance with any provision of any lease without the Bank's written consent;
- (f) The execution and delivery of the Security Agreement does not breach any other agreement to which the Lessor is a party or by which it is bound and does not effect the acceleration of any obligation of the Lessor;

- (g) The Lessor shall upon request, promptly furnish the Bank in writing with all information requested with respect to all or any of the leases;
- (h) Subject to the rights of a Lessee under a lease, the Bank may from time to time inspect all or any Financed Vehicles, wherever located;
- (i) The Lessor shall keep its books and records in good order and its accounts in accordance with generally accepted accounting principles and permit the Bank inspection of such books and records as may relate to the Financed Vehicles at all reasonable times;
- (j) The Lessor shall furnish copies of its audited financial statements to the Bank within 120 days of the end of its fiscal year;
- (k) The Lessor shall furnish the Bank with:
 - (i) copies of its current monthly operating statements by the 30th day following month end, signed by the Lessor's officer attesting to the correctness of the said statements, and
 - (ii) a copy of the monthly aged, lease receivables listing;
- (l) The Bank may conduct independent collateral examinations in its discretion, of the books and records of the Lessor which relate to the Financed Vehicles and at such time or times, the Lessor will provide the Bank with an aged list of lease receivables. The Lessor shall afford the Bank such reasonable access to its books and records as may be required so as to permit the Bank to conduct such examinations, such examinations shall be at no cost to the Lessor;
- (m) The Lessor will obtain and maintain proper insurance coverage with respect to each Financed Vehicle held in inventory for lease or resale and will maintain a back-up insurance policy to cover instances where a Lessee's insurance coverage has lapsed. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
- (n) The Lessor hereby warrants and agrees that:
 - (i) all laws relating to each lease and to the leasing of the Financed Vehicles shall be complied with,
 - (ii) each lease will represent a genuine transaction and will be

enforceable in accordance with its terms against each Lessee,

- (iii) the Financed Vehicles shall be delivered to and accepted by the Lessee named in the lease relating thereto,
 - (iv) each Lease will correctly and fully describe the Financed Vehicles leased thereunder and the obligations and name of the Lessee, and
 - (v) the Lessor will register a financing statement under the Personal Property Security Act in respect of each lease which contains an option to purchase the Financed Vehicle or in respect of which such an option exists, such financing statement to be registered within 10 days of the date of execution of the lease.
 - (o) The Lessor shall keep and shall require each Lessee to keep the Financed Vehicles in a state of good repair.
 - (p) The Lessor shall cause each Lessee to obtain and maintain proper insurance coverage with respect to each Financed Vehicle. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
4. All amounts now or hereafter advanced by the Bank to the Lessor will be repayable by the Lessor to the Bank at any time in the Bank's discretion.
5. Subject to the right of the Bank to demand payment at any prior time in its discretion, the Lessor may arrange to pay any loan described in any Proceeds Request in instalments to be payable in the amounts and at the times set out in the Proceeds Request. In such case, the Lessor agrees that in respect of the prepayment of any principal amount owing pursuant to any instrument securing an advance, the Lessor will pay to the Bank a prepayment premium equal to 3 % of the amount prepaid, unless:
- (a) the related lease is terminated by mutual consent of the Lessor and the Lessee,
 - (b) the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
 - (c) the Financed Vehicle is destroyed or in the opinion of the Bank is rendered unsuitable for further leasing,
 - (d) the Financed Vehicle has been used in daily rental service for at least twelve months, or

- (e) the prepayment is made pursuant to the Lessee's default.

The Lessor acknowledges that the Bank will rely upon specified instalment payments in arranging its own internal financing arrangements and that the foregoing prepayment provisions are reasonable.

6. Subject to the right of the Bank to demand payment at any prior time in its discretion, the amount advanced by the Bank pursuant to a Proceeds Request shall immediately become due and payable if, without the Bank's written consent:
 - (i) any lease attached to such Proceeds Requests expires, is cancelled, is rescinded or otherwise terminates,
 - (ii) any Financed Vehicle referred to in such Proceeds Request is materially damaged, sold, exchanged or otherwise disposed of,
 - (iii) the rights or other obligations of a Lessee under any lease attached to such Proceeds Request are assigned to or assumed by any other person,
 - (iv) the insurance coverage or any part thereof required by the Bank or under any of the leases attached to such Proceeds Request are cancelled, lapse or otherwise terminate, or
 - (v) a Lessee breaches any other covenant of a lease attached to such Proceeds Request.
7. Each of the following events or conditions shall, for the purposes of this Security Agreement, be a default:
 - (a) if the Lessor fails to pay the Bank any amount owing to the Bank hereunder or under any Proceeds Request;
 - (b) if the Lessor fails to perform or observe any condition, covenant, agreement, undertaking or other provision contained either in this Security Agreement or in any other agreement now or hereafter existing between it and the Bank;
 - (c) if a petition or application therefore is made or filed by or against the Lessor under any bankruptcy or insolvency legislation or the Lessor makes an assignment for the benefit of its creditors or a proposal or proposed commercial arrangement under any such legislation or becomes insolvent;
 - (d) if winding up, liquidation, dissolution or receivership proceedings are commenced by, against or with respect to the Lessor or all or

any of its property, or if a resolution is passed for the Lessor's winding up, liquidation or dissolution;

- (e) if a receiver, receiver/manager, custodian or other person with similar powers is appointed in respect of the Lessor or all or any of its property or if an execution or similar process is filed, registered levied or enforced against all or any of its property in which a security interest has been given hereby, or if all of a substantial part of the Lessor's property or if all or any of the Financed Vehicles or security interests given pursuant to the Agreement are seized or taken possession of under any judicial process or pursuant to any encumbrance or by a landlord or otherwise;
- (f) if any of the representations or warranties set out in paragraph 3 hereof is false, or
- (g) if the Lessor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not.

8. Without prejudice to the Bank's rights and remedies, following any default hereunder, all unpaid amounts shall become immediately due and be payable without notice or demand and the Bank shall have all rights and remedies of a secured party under the Personal Property Security Act. In addition, and notwithstanding, any of the provisions of the Personal Property Security Act, it is agreed that in the event of any default:

- (a) subject to the rights or any Lessee under a lease, the Bank may without liability for rent or other charges or costs or damages, take possession of any Financed Vehicle in any lawful manner,
- (b) in connection with taking or keeping possession or moving, assembling, packing, disposing of, shipping or otherwise dealing with all or any of the Financed Vehicles, the Bank may, without liability for rent, other charges or costs or damages, use and fully enjoy all or any of the Financed Vehicles and may, for the purposes set out herein, enter the Lessor's lands and premises,
- (c) the Bank may, after giving any notice required by applicable law, sell, lease, exchange or otherwise dispose of all or any of the Financed Vehicles or any of the other collateral in which a security interest has been given hereby,
- (d) the Bank may, after giving any notice required by applicable law and either in its own name or that of the Lessor, collect, obtain payment of, sue or otherwise deal with all or any of the proceeds in

any lawful manner,

- (e) the proceeds of any disposition or dealing under subsections c) and d) of this paragraph 8 shall be applied firstly to the expenses of taking and keeping possession of, repairing, processing, insuring, storing, preparing for disposition, disposing of, collecting, obtaining payment of, suing or otherwise dealing with all or any of the collateral in which a security interest has been given hereby, including legal expenses on a solicitor and his client basis, and secondly, to any part or parts of the indebtedness to the Bank; any part of such indebtedness unpaid after such application shall continue to be immediately due and payable,
 - (f) the Bank may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with proceeds, sureties and debtors of the Lessor (including Lessees) and others and with any liens, and the Financed Vehicles as the Bank thinks necessary or advisable without affecting the Lessor's liability with respect to the indebtedness or the effectiveness of this Agreement,
 - (g) the Bank may appoint by instrument in writing, a receiver or receivers of the collateral in which a security interest is granted hereby or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employees of the Bank or not, and the Bank may remove any receiver so appointed and appoint another, or may apply by proceedings in any Court of competent jurisdiction for the appointment of a receiver for the sale of any such collateral. Any such receiver so appointed shall have power to take possession of such collateral or any part thereof and to borrow money required for its maintenance, preservation or protection, and to sell, lease or otherwise dispose of the whole or any part of the collateral on such terms and conditions and in such manner as such receiver shall determine. In exercising any powers, any such receiver shall act as agent for the Lessor and the Bank shall not be responsible for his actions.
9. The Lessor shall give further assurances and do, execute and perform all such acts, deeds, documents and things and obtain all permits, licenses and approvals as may be necessary to enable the Bank to have the full benefit of all rights and remedies herein specified.
10. (a) The security interests created hereby shall be in addition to and not in substitution for any other lien, charge or encumbrance now or hereafter held by the Bank.
- (b) This Security Agreement shall be binding upon and inure to the benefit of

the parties hereto and their respective heirs, successors and assigns and shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

- (c) The Lessor agrees that the Bank shall not have nor assume any obligations under a lease and the Lessor shall perform and continue to perform its obligations pursuant to each lease.

11. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or extend any time for payment of any indebtedness of the Lessor to the Bank.
12. Notices under this agreement shall be in writing and may be left at the address indicated below of such party or sent by registered mail to such party at such address or shall be served personally upon any employee, officer or director of such party and shall be conclusively considered to have been and received on the earliest of:

- (i) the leaving of such notice at such address.
- (ii) the 5th business day of the Bank following the deposit of such notice by prepaid registered post, and
- (iii) such personal service:

Address for the Bank:

Ontario Automotive Financial Services
Centre
155 Rexdale Boulevard 4th Floor
Rexdale, Ontario
M9W 5Z8

Address for the Lessor:

2150 Dunwin Drive, Unit 1
Mississauga, Ontario
L5L 1C7

Attention: Chief Operating Officer and
Chief Financial Officer

13. The Bank may waive any default by the Lessor under this Security Agreement; provided that no such waiver by the Bank shall extend to or affect any subsequent default or the rights of the Bank resulting therefrom.
14. Any provision hereof contrary to applicable law shall be amended to be permitted by applicable law and if such amendment is not possible, such provisions shall

be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions hereof.

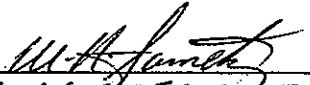
15. All rights and remedies herein are cumulative and not alternative and if more than one person executes this Security Agreement as Lessor, the obligations of such persons to the Bank hereunder shall be both joint and several.
16. In construing this Security Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include corporations and partnerships.
17. The Lessor acknowledges receipt of an executed copy of this Security Agreement.

IN WITNESS WHEREOF the parties have executed this Security Agreement.

LESSOR: **BODKIN CAPITAL CORPORATION**

Per: 
Name: John Mitchell
Title: Secretary

BANK OF MONTREAL

Per: 
Name: W. H. SAMETZ
Title: RELATIONSHIP MANAGER

SECURITY AGREEMENT RE: LEASED VEHICLES

THIS AGREEMENT MADE as of this 3rd day of May, 2004.

BETWEEN:

BODKIN LEASING CORPORATION,

the "Lessor"

- and -

BANK OF MONTREAL,

the "Bank"

WHEREAS:

- i) the Lessor is a lessor of automobiles, light trucks and other vehicles (collectively, "Vehicles") and in the ordinary course of its business from time to time, leases vehicles to its customers ("Lessees");
- ii) the Lessor has requested the Bank to lend money on the security of Vehicles which are to become the subject of leases to Lessees, and
- iii) the Lessor has agreed to give the Bank security interest in such Vehicles, in the leases between the Lessor and Lessees, in the lease proceeds and in the proceeds of disposition of such Vehicles:

NOW THEREFORE the Lessor hereby enters into this Security Agreement with the Bank for valuable consideration.

1. The Lessor may from time to time request a loan from the Bank by an executed "Lessor's Proceeds Request" (a "Proceeds Request") in the form set out in Appendix A hereto. If the request is accepted by the Bank, the Bank will provide to the Lessor, the requested loan to enable the Lessor to purchase or pay for the Vehicle or Vehicles described therein (all such Vehicles described in all such Proceeds Requests being hereinafter called "Financed Vehicles").
2. As security for the repayment of all loans made by the Bank to the Lessor and all other present and future indebtedness and liability of the Lessor to the Bank and interest thereon, the Lessor hereby grants, bargains, assigns, transfers, sets over, mortgages and charges to the Bank, as and by way of a fixed and specific mortgage and charge, and grants to the Bank a continuing security interest in the following collateral:

- (g) The Lessor shall upon request, promptly furnish the Bank in writing with all information requested with respect to all or any of the leases;
- (h) Subject to the rights of a Lessee under a lease, the Bank may from time to time inspect all or any Financed Vehicles, wherever located;
- (i) The Lessor shall keep its books and records in good order and its accounts in accordance with generally accepted accounting principles and permit the Bank inspection of such books and records as may relate to the Financed Vehicles at all reasonable times;
- (j) The Lessor shall furnish copies of its audited financial statements to the Bank within 120 days of the end of its fiscal year;
- (k) The Lessor shall furnish the Bank with:
 - (i) copies of its current monthly operating statements by the 30th day following month end, signed by the Lessor's officer attesting to the correctness of the said statements, and
 - (ii) a copy of the monthly aged, lease receivables listing;
- (l) The Bank may conduct independent collateral examinations in its discretion, of the books and records of the Lessor which relate to the Financed Vehicles and at such time or times, the Lessor will provide the Bank with an aged list of lease receivables. The Lessor shall afford the Bank such reasonable access to its books and records as may be required so as to permit the Bank to conduct such examinations, such examinations shall be at no cost to the Lessor;
- (m) The Lessor will obtain and maintain proper insurance coverage with respect to each Financed Vehicle held in inventory for lease or resale and will maintain a back-up insurance policy to cover instances where a Lessee's insurance coverage has lapsed. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
- (n) The Lessor hereby warrants and agrees that:
 - (i) all laws relating to each lease and to the leasing of the Financed Vehicles shall be complied with,
 - (ii) each lease will represent a genuine transaction and will be

enforceable in accordance with its terms against each Lessee,

- (iii) the Financed Vehicles shall be delivered to and accepted by the Lessee named in the lease relating thereto,
 - (iv) each Lease will correctly and fully describe the Financed Vehicles leased thereunder and the obligations and name of the Lessee, and
 - (v) the Lessor will register a financing statement under the Personal Property Security Act in respect of each lease which contains an option to purchase the Financed Vehicle or in respect of which such an option exists, such financing statement to be registered within 10 days of the date of execution of the lease.
- (o) The Lessor shall keep and shall require each Lessee to keep the Financed Vehicles in a state of good repair.
 - (p) The Lessor shall cause each Lessee to obtain and maintain proper insurance coverage with respect to each Financed Vehicle. Such insurance coverage to be in accordance with the Bank's minimum requirements as laid down from time to time.
4. All amounts now or hereafter advanced by the Bank to the Lessor will be repayable by the Lessor to the Bank at any time in the Bank's discretion.
5. Subject to the right of the Bank to demand payment at any prior time in its discretion, the Lessor may arrange to pay any loan described in any Proceeds Request in instalments to be payable in the amounts and at the times set out in the Proceeds Request. In such case, the Lessor agrees that in respect of the prepayment of any principal amount owing pursuant to any instrument securing an advance, the Lessor will pay to the Bank a prepayment premium equal to 3 % of the amount prepaid, unless:
- (a) the related lease is terminated by mutual consent of the Lessor and the Lessee,
 - (b) the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
 - (c) the Financed Vehicle is destroyed or in the opinion of the Bank is rendered unsuitable for further leasing,
 - (d) the Financed Vehicle has been used in daily rental service for at least twelve months, or

- (e) the prepayment is made pursuant to the Lessee's default.

The Lessor acknowledges that the Bank will rely upon specified instalment payments in arranging its own internal financing arrangements and that the foregoing prepayment provisions are reasonable.

- 6. Subject to the right of the Bank to demand payment at any prior time in its discretion, the amount advanced by the Bank pursuant to a Proceeds Request shall immediately become due and payable if, without the Bank's written consent:
 - (i) any lease attached to such Proceeds Requests expires, is cancelled, is rescinded or otherwise terminates,
 - (ii) any Financed Vehicle referred to in such Proceeds Request is materially damaged, sold, exchanged or otherwise disposed of,
 - (iii) the rights or other obligations of a Lessee under any lease attached to such Proceeds Request are assigned to or assumed by any other person,
 - (iv) the insurance coverage or any part thereof required by the Bank or under any of the leases attached to such Proceeds Request are cancelled, lapse or otherwise terminate, or
 - (v) a Lessee breaches any other covenant of a lease attached to such Proceeds Request.
- 7. Each of the following events or conditions shall, for the purposes of this Security Agreement, be a default:
 - (a) if the Lessor fails to pay the Bank any amount owing to the Bank hereunder or under any Proceeds Request;
 - (b) if the Lessor fails to perform or observe any condition, covenant, agreement, undertaking or other provision contained either in this Security Agreement or in any other agreement now or hereafter existing between it and the Bank;
 - (c) if a petition or application therefore is made or filed by or against the Lessor under any bankruptcy or insolvency legislation or the Lessor makes an assignment for the benefit of its creditors or a proposal or proposed commercial arrangement under any such legislation or becomes insolvent;
 - (d) if winding up, liquidation, dissolution or receivership proceedings are commenced by, against or with respect to the Lessor or all or

any of its property, or if a resolution is passed for the Lessor's winding up, liquidation or dissolution;

- (e) if a receiver, receiver/manager, custodian or other person with similar powers is appointed in respect of the Lessor or all or any of its property or if an execution or similar process is filed, registered levied or enforced against all or any of its property in which a security interest has been given hereby, or if all of a substantial part of the Lessor's property or if all or any of the Financed Vehicles or security interests given pursuant to the Agreement are seized or taken possession of under any judicial process or pursuant to any encumbrance or by a landlord or otherwise;
- (f) if any of the representations or warranties set out in paragraph 3 hereof is false, or
- (g) if the Lessor shall default in the due observance or performance of any covenant, undertaking or agreement heretofore or hereafter given to the Bank, whether contained herein or not.

8. Without prejudice to the Bank's rights and remedies, following any default hereunder, all unpaid amounts shall become immediately due and be payable without notice or demand and the Bank shall have all rights and remedies of a secured party under the Personal Property Security Act. In addition, and notwithstanding, any of the provisions of the Personal Property Security Act, it is agreed that in the event of any default:

- (a) subject to the rights or any Lessee under a lease, the Bank may without liability for rent or other charges or costs or damages, take possession of any Financed Vehicle in any lawful manner,
- (b) in connection with taking or keeping possession or moving, assembling, packing, disposing of, shipping or otherwise dealing with all or any of the Financed Vehicles, the Bank may, without liability for rent, other charges or costs or damages, use and fully enjoy all or any of the Financed Vehicles and may, for the purposes set out herein, enter the Lessor's lands and premises,
- (c) the Bank may, after giving any notice required by applicable law, sell, lease, exchange or otherwise dispose of all or any of the Financed Vehicles or any of the other collateral in which a security interest has been given hereby,
- (d) the Bank may, after giving any notice required by applicable law and either in its own name or that of the Lessor, collect, obtain payment of, sue or otherwise deal with all or any of the proceeds in

any lawful manner,

- (e) the proceeds of any disposition or dealing under subsections c) and d) of this paragraph 8 shall be applied firstly to the expenses of taking and keeping possession of, repairing, processing, insuring, storing, preparing for disposition, disposing of, collecting, obtaining payment of, suing or otherwise dealing with all or any of the collateral in which a security interest has been given hereby, including legal expenses on a solicitor and his client basis, and secondly, to any part or parts of the indebtedness to the Bank; any part of such indebtedness unpaid after such application shall continue to be immediately due and payable,
- (f) the Bank may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with proceeds, sureties and debtors of the Lessor (including Lessees) and others and with any liens, and the Financed Vehicles as the Bank thinks necessary or advisable without affecting the Lessor's liability with respect to the indebtedness or the effectiveness of this Agreement,
- (g) the Bank may appoint by instrument in writing, a receiver or receivers of the collateral in which a security interest is granted hereby or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employees of the Bank or not, and the Bank may remove any receiver so appointed and appoint another; or may apply by proceedings in any Court of competent jurisdiction for the appointment of a receiver for the sale of any such collateral. Any such receiver so appointed shall have power to take possession of such collateral or any part thereof and to borrow money required for its maintenance, preservation or protection, and to sell, lease or otherwise dispose of the whole or any part of the collateral on such terms and conditions and in such manner as such receiver shall determine. In exercising any powers, any such receiver shall act as agent for the Lessor and the Bank shall not be responsible for his actions.

- 9. The Lessor shall give further assurances and do, execute and perform all such acts, deeds, documents and things and obtain all permits, licenses and approvals as may be necessary to enable the Bank to have the full benefit of all rights and remedies herein specified.
- 10. (a) The security interests created hereby shall be in addition to and not in substitution for any other lien, charge or encumbrance now or hereafter held by the Bank.
- (b) This Security Agreement shall be binding upon and inure to the benefit of

the parties hereto and their respective heirs, successors and assigns and shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

- (c) The Lessor agrees that the Bank shall not have nor assume any obligations under a lease and the Lessor shall perform and continue to perform its obligations pursuant to each lease.

11. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or extend any time for payment of any indebtedness of the Lessor to the Bank.

12. Notices under this agreement shall be in writing and may be left at the address indicated below of such party or sent by registered mail to such party at such address or shall be served personally upon any employee, officer or director of such party and shall be conclusively considered to have been and received on the earliest of:

- (i) the leaving of such notice at such address.
- (ii) the 5th business day of the Bank following the deposit of such notice by prepaid registered post, and
- (iii) such personal service:

Address for the Bank:

Ontario Automotive Financial Services
Centre
155 Rexdale Boulevard 4th Floor
Rexdale, Ontario
M9W 5Z8

Address for the Lessor: 2150 Dunwin Drive, Unit 1
Mississauga, Ontario
L5L 1C7

Attention: Chief Operating Officer and
Chief Financial Officer

13. The Bank may waive any default by the Lessor under this Security Agreement; provided that no such waiver by the Bank shall extend to or affect any subsequent default or the rights of the Bank resulting therefrom.

14. Any provision hereof contrary to applicable law shall be amended to be permitted by applicable law and if such amendment is not possible, such provisions shall

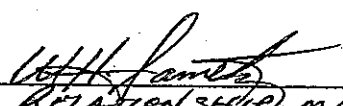
- be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions hereof.
15. All rights and remedies herein are cumulative and not alternative and if more than one person executes this Security Agreement as Lessor, the obligations of such persons to the Bank hereunder shall be both joint and several.
 16. In construing this Security Agreement, words in the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include corporations and partnerships.
 17. The Lessor acknowledges receipt of an executed copy of this Security Agreement.

IN WITNESS WHEREOF the parties have executed this Security Agreement.

LESSOR: **BODKIN LEASING CORPORATION**

Per: 
Name: John Mitchell
Title: Secretary

BANK OF MONTREAL

Per: 
Name: RELATIONSHIP MANAGER
Title: W.H. SAMETZ

ACKNOWLEDGMENT AND AGREEMENT

TO: Bank of Montreal ("BMO")

RE: Bodkin Financial Corporation ("Financial")

WHEREAS BMO and Financial entered into a Term Sheet dated March 8, 2004, as amended and restated as of September 13, 2005 and pursuant to such term sheet BMO and Financial entered into, among other agreements, an Operating Loan Agreement, a FirstBank Fixed Rate Lending Agreement and an Undertaking, each dated as of May 3, 2004 (collectively, with the term sheet, as amended, the "Loan Documents").

AND WHEREAS each of the undersigned (collectively, the "Guarantors"), has guaranteed any and all obligations of Financial to BMO pursuant to guarantees each dated as of May 3, 2004 (collectively, the "Guarantees").

AND WHEREAS each of the Guarantors have delivered to BMO a general security agreement, a movable hypothec, a Security Agreement re Leased Vehicles and certain other security documents, each dated as of May 3, 2004, as security for such Guarantees (collectively, the "Security").

AND WHEREAS pursuant to articles of amalgamation effective December 15, 2005, Financial and 551520 Ontario Limited amalgamated (the "Amalgamation") to form Bodkin Financial Corporation (the "Amalgamated Corporation").

AND WHEREAS the Amalgamated Corporation is the corporation continuing from the Amalgamation.

NOW THEREFORE this agreement witnesses that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), each of the Guarantors acknowledges and agrees as follows:

1. Each Guarantor hereby acknowledges the Amalgamation.
2. Each Guarantor hereby acknowledges, confirms and agrees that the Guarantee given by such Guarantor guarantees the indebtedness, liabilities and obligations of the Amalgamated Corporation to BMO, howsoever and whensoever incurred (including the indebtedness, liabilities and obligations of the Amalgamated Corporation pursuant to the Loan Documents), whether incurred prior to or subsequent to the Amalgamation, all as though the indebtedness, liabilities and obligations of the Amalgamated Corporation to BMO had been originally guaranteed pursuant to the Guarantee by each Guarantor.
3. Each Guarantor hereby acknowledges, confirms and agrees that the liens and security interests granted to BMO pursuant to the Security shall continue notwithstanding the Amalgamation.

4. Each of the Guarantees and the Security is a valid, legal and binding obligation of the Guarantor party thereto, enforceable against such Guarantor in accordance with its terms and is in full force and effect, unamended.

DATED as of this 12th day of December, 2005.

BODKIN LEASING CORPORATION

Per: 

Name:

Title:

I have authority to bind the Corporation.

BODKIN CAPITAL CORPORATION

Per: 

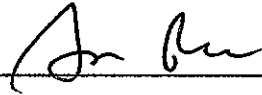
Name:

Title:

I have authority to bind the Corporation

TAB F

**THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

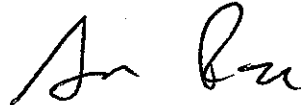
A handwritten signature in black ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

**PLEASE REFER TO
VOLUMES II – IV OF THE
APPLICATION RECORD**

TAB G

**THIS IS EXHIBIT "G" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in cursive script, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

THIS MASTER ASSIGNMENT AGREEMENT made as of the 26th day of November, 1997.

BETWEEN:

THE MUTUAL LIFE ASSURANCE COMPANY OF CANADA, a
company incorporated pursuant to the laws of Canada,

(hereinafter called "Mutual")

OF THE FIRST PART

and

BODKIN LEASING CORPORATION, BODKIN EQUIPMENT LEASING
CORPORATION and BODKIN CAPITAL CORPORATION, corporations
incorporated pursuant to the laws of Canada,

(hereinafter jointly and severally called "Assignor")

OF THE SECOND PART

and

551520 ONTARIO LIMITED ("Guarantor"), a corporation incorporated pursuant
to the laws of Canada,

OF THE THIRD PART

WHEREAS Assignor is in the business of leasing, selling and financing
equipment and vehicles pursuant to leases and other finance agreements;

AND WHEREAS Guarantor is guaranteeing the performance of the Assignor
under the terms of this Agreement;

AND WHEREAS Mutual is prepared to take assignment of certain rights
contained in such agreements upon the terms and conditions herein specified;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of
the mutual covenants herein contained and other good and valuable consideration, the
receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to
the terms set out below.

1. INTERPRETATION

1.01 **Definitions:** In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words and phrases shall have the following meanings, respectively:

"Agreement" means this agreement together with any schedules hereto, any amendments hereof or any addendum's hereto;

"Approved Securities" means any securities which Mutual shall, in its discretion, approve as acceptable collateral to secure the obligations of Assignor to Mutual hereunder;

"Assigned Leases" means the Leases in respect of which an Assignment of Rights has been made by Assignor to Mutual pursuant to the terms hereof, and "Assigned Lease" shall have a corresponding meaning;

"Assignment of Rights" means, with respect to any Lease, a written assignment or grant by Assignor of the following rights with respect thereto:

- (a) an absolute assignment to Mutual, its successors and assigns, of all present and future Receivables in respect of such Lease;
- (b) a transfer to Mutual, its successors and assigns, of any credit owing or to become owing to Assignor with respect to any patent and copyright Indemnity clauses dealing with the Equipment relating thereto;
- (c) an assignment and transfer to Mutual, its successors and assigns, of the benefit, in common with Assignor, of all covenants by the lessee under such Lease, including the benefit of all indemnities and covenants with respect to maintenance and repair of Equipment, payment of rent, use of Equipment and insurance obligations;
- (d) an assignment and transfer to Mutual Life, its successors and assigns, of any Guarantees in respect of such Lease;
- (e) the grant of the right to Mutual in its own name or in the name of Mutual's nominee to ask, demand, sue for, collect, receive and enforce any and all sums payable under such Lease and to enforce all other covenants, obligations, rights and remedies under such Lease; and
- (f) the grant to Mutual by way of a first fixed charge of and a continuing security interest in and to:
 - (i) such Lease and any amendments thereto; and
 - (ii) the Equipment leased thereunder (including all additions, replacements, substitutions, parts, accessions or

attachments to or for such Equipment, whether now or in the future owned by the Assignor, if financed by Mutual Life);

(iii) the Other Receivables in respect of such Lease;

together with all cash and other proceeds of the foregoing (including but not limited to insurance or other proceeds that indemnify or compensate Assignor for any Equipment lost, damaged, destroyed, seized, confiscated or wrongfully taken), and in all of Assignor's rights and interests therein of any nature, as security for the due payment of all monies from time to time owing under such Lease and to compel the due performance by the Lessee of all of its obligations thereunder, and as security for the due performance by Assignor of all of its obligations hereunder and under the Bulk Assignment which includes such Lease; such security interest shall be subject to the rights of the Lessee under the Lease and shall not include the rights validly & absolutely assigned under subsections (a) through (f) above; and the security interest so created shall attach upon the execution of the Bulk Assignment and, with respect to any rights or interest acquired after the date thereof, upon Assignor first acquiring such rights or interest;

"Assignment Price" shall have the meaning ascribed thereto in Section 2.03;

"Bulk Assignment" means an Assignment of Rights in respect of a group of Leases to be made by Assignor to Mutual from time to time pursuant to the terms of this Agreement;

"Bulk Assignment Summary" means, with respect to a proposed Bulk Assignment, a summary of the Leases comprising such proposed Bulk Assignment, which shall be attached as an Appendix to the proposed Bulk Assignment when delivered by Assignor to Mutual Life pursuant to section 2.01 and which shall give particulars of, but not limited to:

- (i) the term of each Lease;
- (ii) details as to the jurisdictions in which the Equipment which is the subject of the Leases is located and in which each Lease has been registered;
- (iii) the payments to be made thereunder by the Lessees and the dates on which such payments are to be made;
- (iv) details as to any rights of termination or Early Purchase Options contained in the Leases which are exercisable prior to the end of the term of such Leases;

The general form of a Bulk Assignment Summary is attached hereto as Schedule B.

"Business Day" means any day of the week on which Mutual transacts business in the City of Toronto, Ontario;

"Default" means the occurrence of an event of default hereunder as more particularly stated in Article 8;

"Discount Rate" means at the relevant time and with respect to a Bulk Assignment the yield on a Government of Canada bond most closely matching the dollar weighted average term of the Bulk Assignment plus 1.5%, as of the date of such Bulk Assignment, or such other rate of return (expressed as a percentage per month) as agreed upon in writing from time to time by the parties hereto;

"Early Purchase Option" under an Assigned Lease means the right of the Lessee thereunder to purchase the Equipment leased pursuant thereto prior to the end of the term of such Assigned Lease in return for the payment of a sum of money (the "Early Purchase Option Price")

"Equipment" means the goods and chattels (including vehicles) described in a Lease;

"Financial Statements" means, for any fiscal period of Assignor, the individual and combined financial statements of Assignor for such fiscal period, consisting of a balance sheet and statements of income, retained earnings and changes in financial position and all notes thereto;

"Guarantee" means any guarantee, postponement or other credit support documentation and rights given in connection with any Lease;

"Guarantor" means 551520 Ontario Limited, as guarantor of the obligations of Assignor in respect of section 10 of this Agreement;

"Lease" means a lease approved by Mutual between Assignor and a Lessee which Assignor wishes to assign to Mutual and where made with reference to a Master Lease, means a schedule thereto, provided that Mutual, in its sole discretion, may, in writing, agree to treat as a Lease for the purposes of this Agreement a lease purchased by Assignor which was originally made between a Lessee and another party as lessor;

"Lessee" means the lessee or other obligor under any lease and includes successors and permitted assigns;

"Liens" means any mortgage, charge, pledge, lien, privilege, security interest, hypothec, lease or other encumbrance (whether fixed or floating) of, upon or with respect to the undertaking of a Person or any property or assets of any kind of such person, real or personal, moveable or immovable, now owned or hereafter acquired;

"Master Reserve Fund Agreement" means the agreement between Assignor, Mutual and the Person acting from time to time as the trustee, in the form attached hereto as Schedule "A";

"Master Lease" means a master lease approved by Mutual between Assignor and a Lessee;

"Mutual Life Bank Account" means an account maintained at a recognized Schedule A chartered bank in Canada in the name of Mutual Life and from which no withdrawals will be permitted without authorization from a designated representative of Mutual Life;

"Net Book Value" in respect of a Lease, means the present value of the monthly payments exclusive of taxes, if any, which remain payable under such Lease plus the guaranteed residual value exclusive of taxes, if any, of the Equipment, if any, discounted at the rate equal to the Discount Rate;

"Other Receivables" in respect of a Lease means monies and credits other than Lease Receivables owing or to become owing in respect of or related to the Equipment leased under such Lease whether during or after the term thereof including, without limitation, all rights to amounts payable on account of any usage following the end of the original term of such Lease or any sale of the equipment, in either case whether or not by or to the Lessee under such Lease;

"Payment Date" in respect of a Lease, means the first day of each month;

"Person" means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of any individual; and words importing persons have a similar meaning;

"Receivables" in respect of a Lease (sometimes herein called "Lease Receivables") means all monies and credits owing or to become owing by the Lessee under such Lease in respect of the Equipment leased thereunder during the term thereof including, without limitation, all rights to (i) all payments on account of monthly rent under such Lease, (ii) subject to section 6.01(s), interest on overdue payments in respect of monthly rent and other amounts as provided for in such Lease, (iii) subject to section 6.01(r), payments in respect of any of the Equipment made on account of any loss or damage thereto, and (iv) subject to section 6.01(r), all amounts payable on account of any purchase of Equipment or early termination of such Lease prior to the expiry of the term thereof;

"Subsidiaries" means each and every body corporate of which Voting Control is owned directly or indirectly by Assignor;

"Summary" in respect of any Lease, means the form of lease summary annexed hereto as Schedule "B";

"Voting Control" means the beneficial ownership of voting shares of any class of a corporation carrying more than 50 percent of the votes for the election of directors of such corporation.

1.02 Generally Accepted Accounting Principles. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles. All financial statements referred to herein and all financial calculations made as required hereby unless otherwise specified shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis. Except with the prior consent of Mutual, where the 'Canadian Institute of Chartered Accountants includes a recommendation in its handbook covering accounting treatment or statement preparation, such recommendation shall be regarded as the generally accepted accounting principle applicable to the circumstances and references to "generally accepted accounting principles" shall be interpreted accordingly.

Notwithstanding the immediately foregoing, Mutual agrees and accepts Assignors method of presenting combined financial statements for all companies prepared on a quarterly and annual basis.

1.03 Articles, Sections, Headings, etc. Articles, sections and headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. All references herein to sections, subsections, paragraphs and other subdivisions of this Agreement, and the words, "herein", "hereof", "hereby", "hereto", "hereunder" and words of similar import, refer to the Agreement as a whole and not to any particular section or subdivision hereof.

1.04 Number and Gender. Words importing the singular number only shall include the plural and vice versa, words importing persons shall include firms and corporations and vice versa and words importing any gender include the other genders.

1.05 Severability. If any provision of this Agreement is prohibited by, or is invalid or unenforceable under, any applicable law, such provisions shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof, provided, however, that where the provisions of any such applicable law may be waived, they hereby are waived by Assignor to the full extent permitted by law to the end that this Agreement shall be valid and binding agreement enforceable in accordance with its terms.

1.06 Currency. Except where expressly provided otherwise, all references in this Agreement to sums of money are to lawful money of Canada.

1.07 Governing Law. This Agreement shall be deemed to have been made under, and shall be governed by, the laws of the Province of Ontario.

1.08 Conflict. All documents required to be delivered by Assignor hereunder or in connection with any Assignment, including any Lease, are subject to the provisions of this Agreement and in the event of a conflict between this Agreement and the express provisions of such other documents, the provisions of this Agreement shall govern.

1.09 Schedules. The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be part hereof:

- Schedule A - Master Reserve Fund Agreement
- Schedule B - Summary
- Schedule C - Assignment of Rights

2. ASSIGNMENT FACILITY

2.01 Bulk Assignments - Offer. Assignor may from time to time during the period commencing on the date hereof and ending on September 1, 1998 (or such extended period as may be agreed in writing by Assignor and Mutual) offer to make a Bulk Assignment to Mutual in accordance with the terms of this Agreement.

2.02 Bulk Assignments - Acceptance. Subject to Section 2.01, Assignor shall be entitled, but shall not be obliged, from time to time, not more frequently than monthly to request Mutual to accept a Bulk Assignment that:

- (i) the aggregate Assignment Prices in respect of a Bulk Assignment is not less than \$500,000.00;
- (ii) the aggregate of all Assignment Prices paid for Bulk Assignments made hereunder shall not any time exceed \$18,500,000.00;
- (iii) the term of the leases relating to any Bulk Assignment shall not exceed 72 months and such leases shall have a dollar weighted average term that is between 3 and 4 years;

the dollar weighted average term of the Bulk Assignment equals the sum of the 'factors', as calculated for each of the Leases, on a pre-tax basis, in the Bulk Assignment using the following formula:

factor for each Lease in the Bulk Assignment = aggregate remaining payments for the Lease in the Bulk Assignment / aggregate remaining payments for all Leases in the Bulk Assignment x remaining term of the Lease in the Bulk Assignment

- (iv) except as may be specified in writing, the Assignment Price with respect to any particular Lease shall not exceed \$300,000.00.

2.03 Assignment Price. The Assignment Price in respect of each Assignment of Rights shall be equal to the Net Book Value of the Leases to which the Assignment of Rights relate described in the Summary, calculated as at the date upon which the Bulk Assignment is to be made by Assignor to Mutual.

2.04 Fees. All amounts received by or due to the Assignor in respect of each Lease before the date of Assignment of Rights relating thereto to Mutual shall be treated for all purposes as fees for services rendered by Assignor in connection with the negotiation, settlement and administration of such Lease.

2.05 Expiry. After the expiry of one year from the date hereof, unless otherwise agreed to by Mutual, Mutual shall not be under any further obligation to complete any Bulk Assignment.

3. SECURITY

3.01 Payments to Reserve Fund. Concurrently with the making of any Bulk Assignments hereunder, Assignor shall contribute to the Reserve Fund an amount equal to 5% of the Assignment Price payable by Mutual in respect of such Assignment of Rights. Interest on all amounts held in the Reserve Fund shall become part of the Reserve Fund. At no time shall the Assignor be required to pay into or to maintain an amount in the Reserve Fund in excess of 6.5% of the Net Book Value of all outstanding Assigned Leases as calculated at any time.

3.02 Withdrawals from Reserve Fund. Withdrawals from the Reserve Fund shall be in accordance with, and subject to the terms of, the Master Reserve Fund Agreement.

3.03 Securities in Lieu of Cash. With respect to any obligations of Assignor to make contributions to the Reserve Fund, Assignor shall have the option to contribute Approved Securities, endorsed in blank, to the Reserve Fund in lieu of cash, such Approved Securities to be held by Mutual upon the terms and conditions specified in the Master Reserve Fund Agreement. In the event that Assignor exercises its option to contribute Approved Securities in lieu of cash, then Assignor shall contribute Approved Securities with an aggregate market value that is at least 125% of the amount of cash that Assignor would otherwise be required to contribute. Dividends paid on any Approved Securities contributed to the Reserve Fund shall become part of the Reserve Fund.

4. CONDITIONS PRECEDENT TO ASSIGNMENT

4.01 Conditions Precedent to each Assignment. That prior to the making of each Bulk Assignment, Assignor shall deliver to Mutual the following:

- (a) Summary - a Summary (in duplicate) duly executed by Assignor in the form of Schedule "B";
- (b) Lease - the original fully executed Lease(s) identified in the Summary delivered to Mutual, containing a complete description of the Equipment;
- (c) Acceptance Certificate - the fully executed equipment acceptance and lease commencement certificate obtained in respect of the Equipment

and the subject Lease(s), pursuant to which the applicable Lessee has confirmed the delivery of the Equipment, its acceptance of the Equipment without qualification and the commencement of the Lease(s);

- (d) Title - evidence that Assignor has title to the Equipment;
- (e) Bills of Lading - at the request of Mutual, an acknowledged copy of the bill of lading or other proof of the date of delivery of the Equipment to Assignor or pursuant to its direction;
- (f) Compliance with Registration Formalities - evidence of the registrations, recordings or filings made to perfect or otherwise protect the interest of Mutual in the Leases and the Equipment, all in accordance with the provisions of Section 5.01;
- (g) Representations and Warranties - a certificate from an officer of Assignor confirming that the representations and warranties of Assignor set forth in Section 5.01 hereof shall be true and correct as at the date of such Assignment; there shall not have been a default under Article 8 which is continuing and no other condition, event, act or omission shall have occurred which, with the giving of notice, lapse of time, or both, would constitute a default under Article 8 in the form of Schedule "C";
- (h) Credit Report - a copy of the credit report prepared by Assignor and all other credit information in respect of each Lessee associated with the subject Leases and Assignor shall make available for inspection by Mutual Life all of Assignor's files relating to such Lessee;
- (i) Other Documents - all other documentation or such other evidence as Mutual may reasonably request to establish the consummation of the transactions contemplated by each Bulk Assignment and this Agreement and the taking of all proceedings, corporate or otherwise, in connection therewith shall have been received by Mutual, and the form and substance of all such documentation and other evidence shall be satisfactory in all respects to Mutual; and
- (j) Further Assurances - Mutual shall have received such instruments and other documents as Mutual may reasonably request in connection with the Bulk Assignments, and all such instruments and documents shall be in form and content satisfactory to Mutual.

4.02 Acceptance of Bulk Assignment. Upon receipt of the Summary described in Section 4.01(a), Mutual shall have the right to review the Leases included therein and Assignor's financial records with respect thereto and Mutual shall have the right to require the removal of any Lease(s) from such proposed Bulk Assignment as Mutual shall in its absolute discretion determine. If Mutual in its absolute discretion agrees to accept all or any portion of such Bulk Assignment, Mutual will execute the duplicate of the said Summary so submitted (after having made such deletions of Leases as it may require) and deliver the same to Assignor together with its cheque, in full payment of

the purchase price, against delivery of the documents referred to in Section 4.03 to Assignor.

4.03 Documentation - Contemporaneously with the receipt of the Summary executed by Mutual, Assignor shall deliver to Mutual an Assignment of Rights with respect to the Leases included in such Bulk Assignment, to be effective upon delivery, and to be registered by Assignor, within the applicable time limitations, and in such jurisdictions in which registration is necessary to preserve the rights and priorities intended to be created thereby, provided that as soon as possible thereafter Assignor shall deliver to Mutual satisfactory evidence of all such registrations.

4.04 Legal Opinion - Concurrently with the execution of this Agreement, Assignor shall deliver to Mutual the favorable opinion of counsel to Assignor, respecting such matters and in such form as shall be satisfactory to Mutual and its counsel.

5. REPRESENTATIONS AND WARRANTIES

5.01 By Assignor Assignor hereby makes the following representations and warranties and agrees that such representations and warranties shall be true and correct at the time of making any Assignment hereunder and acknowledges and confirms that Mutual is relying on such representations and warranties for all purposes in connection with this Agreement:

- (a) **Existence** - Assignor has been duly incorporated and is a validly subsisting corporation in good standing under the laws of its jurisdiction of incorporation within Canada and is duly qualified to carry on its business under the laws of every jurisdiction in which the nature of the business conducted by it or the property owned or leased by it makes such qualification necessary;
- (b) **Corporate Authority** - Assignor has the power and authority to hold its property and assets, to enter into this Agreement and the Master Reserve Fund Agreement, to execute and deliver and perform its obligations under this Agreement and the Master Reserve Fund Agreement and each lease and to do all such acts and things as are required hereunder or thereunder to be done, observed or performed;
- (c) **Corporate Proceedings** - the execution, delivery and performance of this Agreement, the Master Reserve Fund Agreement and each Bulk Assignment and the execution, issuance, delivery and performance of each Lease have been duly authorized by all necessary corporate action on the part of Assignor, its directors, officers and shareholders; and no such action requires the consent or approval of any regulatory or governmental authority or agency having jurisdiction over it;
- (d) **Execution, Delivery and Enforceability** - this Agreement, the Master Reserve Fund Agreement, each Bulk Assignment and each Assigned

Lease have been duly executed and delivered by Assignor & constitute valid and legally binding agreements and obligations of Assignor, enforceable in accordance with their terms, provided that enforceability of any provisions or of any rights granted to Mutual pursuant to this Agreement, the Master Reserve Fund Agreement or any Lease may be subject to or affected by applicable bankruptcy, insolvency, moratorium, reorganization, personal property security or similar laws affecting the rights or creditors generally and that equitable remedies, such as specific performance, are in the discretion of the court;

- (e) No Conflict - neither the execution and delivery of this Agreement, the Master Reserve Fund Agreement, any Bulk Assignment or any Assigned Lease nor compliance with the terms and provisions hereof or thereof will conflict with or result in a breach thereof or any of the terms, conditions, or provisions of or constitute a default under the charter documents, the by-laws or resolutions of or any unanimous shareholders agreement of Assignor or its directors or shareholders or of any law, regulation, judgment, decree or any order to which Assignor is subject or of any instrument, mortgage, lease or agreement to which Assignor is a party or by which it or its assets may be bound; nor will such execution, delivery or compliance result either in acceleration in the time for performance of any obligation by Assignor or in the creation or any Lien upon any of the properties or rights of Assignor,
- (f) No Default - Assignor is not in default, and there has occurred no event which, with notice or lapse of time, or both, would constitute a default, under any material obligation or under any material license or authorization, which default or event might have consequences which materially and adversely affect its business or property, except a default which is being contested in good faith, with reasonable dispatch and by appropriate proceedings;
- (g) Licenses - Assignor holds all licenses and authorizations from all regulatory & governmental authorities or agencies required in order to permit it to carry on its business as conducted on the date hereof;
- (h) Litigation - there are no suits, actions, litigation, arbitrations or governmental proceedings pending, or, to the best of the knowledge of Assignor, threatened, against Assignor or any of its properties or rights or any of its officers or directors in connection with the affairs or with respect to matters arising out of its business, nor is Assignor or any of its respective properties or rights subject to or affected by any existing judgment, order, decree or other governmental action or proceeding pending or, to the best of the knowledge of Assignor threatened which, in any case, might materially and adversely affect Assignor in the operation of its business or any of its respective properties or rights or which would prevent, hamper or make illegal the transaction contemplated by this Agreement or the Master Reserve Fund Agreement; and

- (i) Assignor does not have any Subsidiaries.

And, with respect to each Assigned Lease, as at the time of Bulk Assignment relating thereto:

- (j) Obligations as Lessor - all covenants and obligations of any kind whatsoever to be performed or fulfilled by Assignor under each Lease including all conditions precedent to the obligations of the Lessee to pay the Receivables have been duly performed or fulfilled;
- (k) Subject Leases - Except as disclosed in writing to Mutual, in respect of each lease described in a Summary:
- (i) Assignor has not given any consents, approvals or waivers under or in respect of the Lease in respect of which the assignment is made which would in any way impair the rights of Assignor which are to be assigned to Mutual;
 - (ii) there has been no prepayment of Receivables, except as required by the Lease;
 - (iii) the Equipment has been delivered, installed and accepted by the Lessee and, to the best of Assignor's knowledge and belief, the Equipment is in good operating condition;
 - (iv) the subject Lessee has no valid basis for contestation of Mutual's right to receive the Receivables at the times and in the full amounts (without set-off or abatement whatsoever) as set out in the subject Lease and notwithstanding any claim by the Lessee relating to the repairs or adjustments to the Equipment or the interruption of service or loss of use of the Equipment, or any loss of business or damage howsoever caused; and
 - (v) the Lease and any Guarantee are genuine, complete and in all respects what they purport to be and the Lease and any Guarantee are valid and legally binding obligations of the subject Lessee and guarantor, as the case may be, enforceable in accordance with its terms subject to bankruptcy, insolvency, personal property security or similar laws affecting creditors rights and the discretion that a court may exercise in the granting of equitable remedies;
- (l) Title to the Equipment - Assignor has good and marketable title to the Receivables and good and marketable title to the Equipment, free and clear of all defects, set-offs, counterclaims, Liens, claims, taxes, charges and encumbrances of any nature or kind whatsoever except for such taxes that are not yet due and payable and except for the rights of the Lessee to the Equipment under each Lease;

- (m) No Competing Interests - no other person, firm or corporation has any prior right, title or interest in and to the Receivables and the Equipment, which has not been waived in writing;
- (n) Security Interest Constituted by the Lease - subject to Section 6.01(d), in the event that the Lease or any Guarantee creates a security interest in favour of Assignor such security interests have been duly and validly perfected by the proper and timely registration of all documents required for such purposes in the applicable jurisdiction and has continued to be duly and validly perfected without interruption from the time of such registration;
- (o) Absence of Default - each Lease is in full force and effect, unamended and there exists no event of default under any Lease and no event has occurred which would with the giving of notice or lapse of time or both constitute an event of default under any Lease;
- (p) Taxes - no sales or other taxes are payable in respect of the Receivables except for such taxes which the Lessee under each Lease will be obligated to pay;
- (q) Priority of Mutual's Interest - Assignor has not granted and will not, without the prior written consent of Mutual, grant, assume or allow to exist any Lien in favour of any party which would be capable of ranking ahead of pari passu with Mutual's interests hereunder or under the Bulk Assignment.

5.02 Material and Survival of Warranties. All representations and warranties of Assignor contained herein, and all representations and warranties contained in any certificate or material delivered hereunder, shall be deemed to have been relied upon by Mutual notwithstanding any investigation heretofore or hereafter made by Mutual or by its counsel or by any other representative of Mutual and shall survive the completion of any and all Bulk Assignments and continue in full force and effect for the benefit of Mutual and its assigns without limitation.

6. COVENANTS

6.01 Covenants of Assignor. Assignor covenants and agrees with Mutual that Assignor shall observe and perform the covenants set forth in this Section 6.01:

- (a) Assignor to Administer Lease - in connection with each of the Leases, Assignor shall provide to Mutual the following services:
 - (i) Assignor shall continue to duly and punctually perform and observe all of the covenants and obligations of the lessor under each Lease and maintain such records in respect of each lease and Equipment as prudent business practice would require;

- (ii) Assignor shall use its best efforts, as agent for Mutual, to collect or cause to be collected from each Lessee on behalf of and hold in trust for Mutual, the Receivables payable pursuant to each Lease (including, but not limited to, applicable taxes in respect thereof) at the time or times specified in each Lease;
- (iii) Assignor shall hold all such Lease Receivables for all Assigned Leases in trust for Mutual Life and such Lease Receivables shall be and be deemed to be held separate and apart from Assignor's own property and the property of any other Person; in accordance therewith, Assignor shall deposit all amounts received from each Lessee (after recording and handling GST/PST elements) on account of such Lease Receivables into the Mutual Life Bank Account no later than the day following the date of Assignor's knowledge of the receipt;
- (iv) subject to Section 6.01(d) and (f), Assignor shall promptly and on a timely basis effect and properly complete all filings or recordings required in order to protect Assignor's & Mutual's interests in each Assigned Lease and in the Equipment subject thereto whether necessary by law or reasonably prudent for the protection of such interests under applicable personal property security or bill of sale legislation and Assignor agrees to indemnify and save harmless Mutual with respect to any loss, costs, damages or expenses which Mutual may suffer or incur as a result of or arising out of, directly or indirectly, any failure by Assignor to so do (and Mutual may undertake the same at the cost and expense of Assignor but without obligation or responsibility for any omission or invalid accomplishment thereof); and
- (v) Assignor shall attend to all dealings with Lessees with respect to early buyouts or upgrades of any Leases and account to Mutual for the proceeds thereof in accordance with Article 11 hereof.

(b) Monthly Reporting -

- (i) Assignor shall prepare and provide to Mutual within fifteen (15) days following the end of each month a monthly report for each of the Leases indicating the number and amount of payments to date, the number and amounts of payments to date still outstanding under the Lease, and the number and amount of payments in arrears, if any, and such other information as Mutual may from time to time reasonably require;
- (ii) a monthly report aggregating for all of the Leases in effect as at the end of the month the information referred to in paragraph (i) above;

- (c) Repayment and Collection - Assignor shall pay to Mutual on the Payment Date in respect of each Lease, all Receivables actually received by it pursuant to such Lease. Any arrears of payment occasioned by the delay of Assignor in paying Receivables in respect of which it has an obligation to pay to Mutual shall bear interest at a rate per annum equal to the lesser of (i) the Discount Rate agreed upon in respect of the subject lease plus six (6%) percent and (ii) twenty one (21%) percent;
- (d) Registration re Leases - subject to any express waiver which is contained in the Summary relating to a subject Lease and which is given by Mutual, in writing, in respect of the registration requirements for perfection of any security interest constituted by such Lease, Assignor agrees to make or cause to be made such registrations and further assurances as shall be necessary or of advantage to perfect or otherwise protect the interest or security interest of Assignor or Mutual, and their successors and assigns, in respect of each Lease for which the value of the Equipment described in the Lease is at least \$5,000.00 and to deliver to Mutual evidence of such registration;
- (e) Registrations re Agreement - Assignor agrees to make or cause to be made such registrations and further assurances as shall be necessary or of advantage to perfect or otherwise protect the interest or security interest of Mutual, and its successors and permitted assigns, under this Agreement and to deliver to Mutual evidence of such registration. Mutual hereby authorizes Assignor to make such registrations as agent for Mutual;
- (f) Registrations or Bank Waivers re Assignment - Assignor agrees to make or cause to be made such registrations and further assurances as shall be necessary or of advantage to perfect or otherwise protect the interest or security interest of Mutual, and its successors and permitted assigns, under each Bulk Assignment and to deliver to Mutual evidence of such registration in conjunction with each Bulk Assignment. Mutual hereby authorizes Assignor to make such registrations as agent for Mutual; or, Assignor shall obtain from its operating bank(s) a waiver(s) (in written form with substance satisfactory to Mutual Life and which is in full force and effect as of the relevant time) agreeing to release or subordinate in favour of Mutual Life any interest in the Leases relating to the Bulk Assignment.
- (g) Review of Documentation - Assignor agrees that Mutual shall be allowed at least five (5) Business Days to review all documentation submitted to Mutual in connection with any Assignment of Rights requested and that, in Mutual's discretion, Mutual shall be entitled to forward all such documentation to Mutual's counsel for review;
- (h) Recourse of Mutual Against Lessee - Assignor agrees to co-operate fully with Mutual should Mutual exercise its right of recourse against the Lessee and Assignor agrees to execute such further assurances to

confirm that Mutual has full right of recourse against the Lessee;

- (i) Taxes, etc. Payable by Assignor - Assignor agrees to make such payments required to be made by it in respect of tax payable by the Lessee under any Lease and collected by Assignor pursuant to the provisions of the Retail Sales Tax Act (Ontario) or the corresponding legislation of any applicable jurisdiction, as the case may be;
- (j) Insurance - Assignor agrees to maintain appropriate property and liability insurance with respect to all leases and Equipment;
- (k) Indemnity - Assignor shall indemnify and save Mutual harmless from and against any and all liability, loss, harm, damage, cost or expense, including reasonable legal fees and including loss of margin or profit, which it may suffer, incur or sustain as a result of or arising out of the negligent or wrongful performance by Assignor (including its employees, agents or servants) of any of its obligations under this Agreement or its failure to perform any of such obligations unless in any of the foregoing circumstances such liability, loss, harm, damage, cost or expense is a result of or arises solely out of the negligence of Mutual, its employees, agents or servants. Mutual does not assume, and shall not by virtue of this Agreement be deemed to assume, any obligations whatsoever under the Leases or in respect of the Equipment, including, without limitation, any obligations relating to the installation, maintenance and repair of the warranty made by Assignor to the Lessees or arising by operation of law in respect of the Equipment or the Leases and claims by third parties relating to any infringement of patent, copyright or other rights, and Assignor shall indemnify and save Mutual harmless from and against any liability, loss, harm, damage, cost or expense, including reasonable legal fees, arising from any deemed assumption of such obligations;
- (l) Assignor to Carry on Business - Assignor shall keep in full force and effect its corporate existence, shall diligently maintain, use and operate its property and shall carry on and conduct its business to be carried on and conducted in full compliance with all applicable laws and in a proper and efficient manner so as to preserve and protect such property and the earnings, incomes, rents, issues and profits thereof, and shall promptly provide to Mutual all reasonable information requested by Mutual concerning the business, property, assets and financial condition of Assignor;
- (m) Inspection - Assignor agrees to permit Mutual or its employees or agents to attend at and inspect the books and records of Assignor in respect of any Lease or Equipment at any time and from time to time during the term of this Agreement during business hours and without unreasonable disruptions. Assignor agrees to co-operate with Mutual's representatives in this behalf and it agrees to provide such information as Mutual may reasonably require in respect of any Lessee, Lease or Equipment. Mutual shall be entitled to receive copies of any such written information

as it shall reasonably require from Assignor under this paragraph;

- (n) Notice of Default - promptly and in any event no later than 10 days after obtaining knowledge thereof, Assignor shall notify Mutual of the occurrence of a Default or the occurrence of any event or circumstance which following the giving of notice or the expiry of time or both would constitute a Default and shall deliver to Mutual a statement specifying the details of the facts thereof and of the action which Assignor proposes to take with respect thereto;
- (o) Notice of Litigation and Change of Name - Assignor shall notify Mutual in the event any material litigation is commenced or contemplated by any Lessee against Assignor and Assignor has received written notice of the same. In the event of any change of name, Assignor shall give Mutual at least ten (10) Business Days notice prior to the effective date of such change;
- (p) No Distributions - Subject to Section 6.01(w), Assignor shall not make any distributions to its shareholders by way of dividend, redemption or return of capital without the prior consent of Mutual which consent may not be unreasonably withheld or delayed;
- (q) Financial Statements - Assignor shall:
 - (i) within 60 days of each fiscal quarter provide Mutual with unaudited Financial Statements for such period; and
 - (ii) within 90 days of each fiscal year end, provide Mutual with audited Financial Statements for such period together with a report of its auditors thereon;

Provided that all such financial statements shall be prepared in accordance with generally accepted accounting principles;

- (r) Equipment and Assigned Leases - Assignor will not accept the return of any of the Equipment or modify or terminate any of the Assigned Leases in whole or in part or agree to a reduction of rentals thereunder nor will Assignor sell or otherwise dispose of any of the Equipment (except as expressly permitted hereby), provide or deliver any consent or waiver under or in connection with any of the Assigned Leases, nor permit any of the Equipment to be moved from its current location except as deemed to be in the normal course of business by Assignor and where Assignor decides, as agent for Mutual, that Mutual's rights and interests are not impaired. Upon receipt by Assignor of any notice given pursuant to any of the Assigned Leases, Assignor shall forthwith furnish a copy thereof to Mutual. In the event any of the Equipment comes into Assignor's possession, Assignor will proceed to dispose of the Equipment through Assignor's normal business procedures and will report on the results of any such disposition to Mutual at the end of each month in which there has been a disposition;

- (s) Appointment as Collection Agent - Notwithstanding the provisions of the foregoing paragraph (r) or anything to the contrary herein, but without limiting Mutual's rights under any Bulk Assignment or otherwise hereunder, Mutual hereby appoints Assignor as its agent to collect on behalf of and remit to Mutual all payments owing by each Lessee pursuant to the Assigned Leases on account of amounts hereby assigned to Mutual until Assignor shall be otherwise notified by or on behalf of Mutual. Assignor agrees to hold in trust for and remit to Mutual forthwith upon receipt, all payments collected or received by it from each Lessee pursuant to a Lease on account of Receivables, provided that if Assignor makes payment to Mutual in accordance with Section 6.01(c) then notwithstanding Assignor's agreement to remit such amounts to Mutual, Assignor shall be entitled to retain any payment made by a Lessee, including any interest, on account of the monthly rent payment or payments under the applicable Lease in respect of which Assignor has made payment of the same amount to Mutual;
- (t) Compliance with Laws, etc. - Assignor shall keep in full force and effect all rights, licenses, leases and franchises reasonably necessary to the conduct of its business and comply with (i) all applicable laws and regulations wherever its business is conducted, (ii) the provisions of its charter documents and by-laws, and (iii) all agreements and instruments by which it or any of its properties or assets may be bound and all applicable decrees, orders and judgments, in each case in such manner that there will not result a material and adverse effect on the financial condition, properties or business of Assignor;
- (u) Sale of Equipment, etc. - Assignor shall not enter into any agreement or do any other thing to derogate from its grant under any Bulk Assignment or materially prejudice the rights of Mutual thereby created; subject to the foregoing it is acknowledged that Assignor may sell any Equipment and any rights it may have to claim capital cost allowance thereon but such sale shall be subject to Mutual's rights hereunder and under the applicable Bulk Assignment and the Lessee's rights under the applicable Assigned Lease, and provided further that prior to any such sale Assignor shall deliver to Mutual the purchaser's written acknowledgment of and subordination to Mutual's rights hereunder and under such Bulk Assignment.
- (v) Mutual Life Bank Account - Assignor shall have no beneficial interest in the Mutual Life Bank Account or any interest or other income earned thereon. Assignor shall report to Mutual Life monthly as to all Lease Receivables deposited by Assignor to the Mutual Life Bank Account and Assignor shall review any statements and other reports provided to it in connection therewith to ensure the accuracy thereof and shall provide copies of all such statements and reports to Mutual Life. Assignor shall be entitled to all interest earned on the Mutual Life Bank Account. Any interest earned shall be dispersed to Assignor by Mutual Life on the last Business Day of each month. Any balance remaining in the Mutual Life

Bank Account on the last Business Day of each month (as a result of Lessee's payment of Lease Receivables in advance) shall be left in the account.

- (w) Minimum Equity Covenant - Subject to Section 6.01(p), Assignor shall maintain a minimum equity position (including director and shareholder loans) of \$2,500,000.00 to be verified by audited Financial Statements of the Assignor.

6.02 Covenants of Mutual. Mutual covenants and agrees with Assignor that Mutual shall observe the covenants set forth in this Section 6.02:

- (a) Quiet Enjoyment by Lessee - Mutual agrees that it shall not disturb any Lessee's right of quiet enjoyment under each Assigned Lease so long as no default has occurred under any such Lease; and
- (b) Dealing with Lessee - until such time as a default has occurred under an Assigned Lease, or there shall have occurred any Default hereunder or any event which, with notice or lapse of time, or both, would constitute a Default or entitle Mutual to declare a Default hereunder and subject to Section 6.01(r), Mutual hereby appoints Assignor as its exclusive agent to deal with the Lessee or any company affiliated with the Lessee in relation to matters arising under such Lease.

7. DEFAULT BY LESSEE

7.01 Default by Lessee. If a Lessee under any Assigned Lease has discontinued, for a period of not less than sixty (60) days, the payment of the amounts described in the Summary provided in respect of such Lease as amounts payable by the Lessee (whether or not the Lessee is justified in doing so), Mutual shall be entitled, in its sole discretion, but subject to the limitations in Section 10.02, to require Assignor (or Guarantor) to repurchase the Lease in default at a purchase price equal to the Net Book Value of the amounts remaining unpaid in respect of such Lease, discounted at the Discount Rate applicable to such Lease. In the event Assignor (or Guarantor) does not repurchase the Lease when requested to do so, Mutual may, at its option, withdraw the appropriate purchase price from the Reserve Fund or may, at its option exercise its remedies against the Lessee under the said Lease, without prejudice to Mutual's right to recover from the Reserve Fund any or all amounts owing to Mutual hereunder.

8. DEFAULT BY Assignor

8.01 Default. Assignor shall be in default under this Agreement if bankruptcy, insolvency, winding-up, liquidation, dissolution, receivership, reorganization or similar proceedings are brought by or against it or if Assignor makes an assignment for the benefit of its creditors or if a receiver or receiver and manager is appointed in respect of Assignor or all of its property, or if a material part of Assignor's property is seized or

taken into possession under any judicial process or otherwise and such proceedings are not contested in good faith by Assignor.

8.02 Idem. In the event Assignor breaches or fails to observe any covenant contained in this Agreement and if such breach or failure shall continue for ten (10) business days after Assignor has received notification thereof from Mutual or if any representation or warranty made by Assignor shall be found to have been materially incorrect, false or misleading at the time it was made Mutual may, in its sole discretion, declare Assignor to be in default under this Agreement.

8.03 Idem. If Assignor shall make default in any payment which it has an obligation hereunder to be made to Mutual as and when the same shall be due and payable, Mutual may in its sole discretion declare Assignor to be in default under this Agreement.

8.04 Idem. If Assignor shall cease or threaten to cease to carry on business Mutual may, in its sole discretion, declare Assignor to be in default under this Agreement.

8.05 Idem. If a compromise or arrangement is proposed by Assignor to its creditors or any class of its creditors including, without limitation, any proceeding under the Companies' Creditors Arrangement Act, Mutual may, in its sole discretion, declare Assignor to be in default under this Agreement.

8.06 Idem. If the beneficial ownership or control by agreement or otherwise of the shares of the Assignor, carrying more than 50% of the voting rights ordinarily exercised at a shareholders meeting is reduced to 50% or less than 50% SAVE AND EXCEPT where such change in control is to a corporation or individual having the same financial strength as the Assignor at the time of the change of control.

9. REMEDIES

9.01 Default by Assignor. If a Default should occur and continue unremedied, Mutual may require Assignor to notify all or any Lessees that all future payments to be made under Assigned Leases should be directed to Mutual (or its agent or nominee) and Assignor hereby constitutes and appoints Mutual its irrevocable attorney to execute such documentation, give such notices and take such steps as may be necessary, in the absolute discretion of Mutual, to carry out the intent of this Section 9.01.

9.02 Realization on Default. If Assignor shall have committed a Default under Article 8 and the same shall be continuing, Mutual shall not be under any further obligation to complete any Bulk Assignment and Mutual shall be entitled to realize on the security interest created by the Bulk Assignments and this Agreement and to demand payment from the Trustee pursuant to the terms of the Master Reserve Fund Agreement. Without limiting the generality of the foregoing or any other provisions of this Article 9, Mutual shall have, in respect of its security interest hereunder and under all Bulk Assignments, all rights and remedies of a secured party under the Personal Property Security Act (Ontario).

9.03 Set-Off. Upon the occurrence of a Default, Mutual is authorized, at any time and from time to time, without notice to Assignor or any other Person, any such notice being hereby expressly waived, to set-off and to appropriate and apply any and all deposits, general or special, and any other indebtedness or property at any time held or owing by Mutual to or for the credit or the account of Assignor, whether or not related to this Agreement or any transaction or occurrence hereunder, against and on account, of the indebtedness and other liabilities of Assignor to Mutual hereunder and under any Bulk Assignment, regardless of whether or not Mutual shall have made any demand hereunder or thereunder, and although such liabilities, or any of them, shall be contingent or unmatured. The rights and remedies granted to Mutual under this section shall be in addition to, and not in substitution for, any rights or remedies, including, without limitation, any right of set-off, to which Mutual may otherwise be entitled. Assignor shall not be entitled to deduct or set-off any amount that is owed or claimed to be owed by Mutual to it (other than an amount declared due in any final judgment of a court of competent jurisdiction in respect of which no appeal is pending or may be taken) from any amount of principal, interest or other sums due from Assignor under this Agreement or any Bulk Assignment.

9.04 Remedies Upon Default. In the event a Default has occurred and is continuing, Mutual may enforce its remedies to the full extent permitted by applicable law, this Agreement and the Bulk Assignments and, for any of such purposes, commence such legal action or proceedings as Mutual acting in its sole discretion may deem expedient all without any notice, presentation, presentment, further demand, protest, notice of protest, entering into possession of any of the undertaking, property or assets of Assignor or any other action, notice of all of which are hereby expressly waived by Assignor, except to the extent set forth herein. Without limiting the generality of the foregoing, Mutual may from time to time sell at public or private sale or otherwise realize upon all or any of the security interests created by this Agreement and the Bulk Assignments for such price and upon such terms and conditions as it deems best acting in a commercially reasonable manner in accordance with law. All proceeds of any collection or realization of the security interest created after deduction of accrued interest and penalties plus all reasonable expenses of collection, repossession, transportation and storage incurred by Mutual together with all reasonable legal fees incurred in connection with the collection of any sums due hereunder or under any of the Assigned Leases, may be held by Mutual as security hereunder and/or from time to time applied against any of the obligations secured by this Agreement and the Bulk Assignments. Mutual shall deliver to Assignor any excess of the proceeds after the deduction of amounts so owing.

9.05 Additional Rights. Without limiting any of Mutual's rights as holder of any of the Bulk Assignments, Mutual may grant extensions, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with Assignor and with other Persons, sureties or securities as Mutual may see fit without prejudice to the liability of Assignor hereunder or to Mutual's right in respect of the security constituted by the Bulk Assignments.

9.06 Remedies Cumulative. It is expressly understood and agreed that the rights and remedies of Mutual under this Agreement and the other agreements contemplated in this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law and any single or partial exercise by Mutual or any

right or remedy for a default or breach of any term, covenant, condition or agreement herein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which Mutual may be lawfully entitled for the same default or breach, and any waiver by Mutual of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and any indulgence granted by Mutual shall be deemed not to be a waiver of any subsequent default.

9.07 Cost and Expenses of Collection. All costs and expenses of collection of amounts owing hereunder or under any Bulk Assignment and all costs and expenses that may result from a realization pursuant to this Article 9 including all reasonable legal fees shall be for the account of Assignor and shall be payable on demand and with interest calculated at the rate of 18% per annum calculated and compounded half-yearly on any unpaid balance thereof.

10. GUARANTEE

10.01 Guarantee. Subject to Section 10.02, Assignor and Guarantor hereby guarantee in favour of Mutual the due and punctual payment when due of the Receivables under each of the Leases. The guarantee, set forth in this Section 10.01 shall be a continuing guarantee and shall secure the ultimate unpaid balance of the Receivables due under each of the Leases. Assignor shall have no subrogation rights (and does hereby waive such rights) in respect of any payments made pursuant to this Section 10.01 unless and until Mutual has received payment in full of the Receivables under the Leases with respect to which the payment was made.

10.02 Limitations on Guarantee. The aggregate maximum guarantee of Assignor and Guarantor set forth in Section 10.01 shall be limited to the lesser of 1.5% of the aggregate of each Assignment Price payable by Mutual in respect of all of the Assignments of Rights and 3.5% of the Net Book Value of the Receivables in respect of the Assigned Leases at such time.

11. UPGRADE AND REPURCHASE

11.01 Upgrades. In the event that the Lessee wishes to upgrade the Equipment leased under any Assigned Lease (the "Existing Lease"), Assignor shall be permitted to repurchase from Mutual the Assigned Rights relating to the Existing Lease and such repurchase shall be upon the following terms if Mutual has entered into a binding agreement to fund such upgrade:

- (a) The purchase price payable by Assignor shall be the present value of the amounts remaining to be paid under the Existing Lease discounted at the Discount Rate, accumulating up to 15% of the Assignment Price that contained the Existing Lease. Upgrade repurchases in excess of 15% will be discounted at the lesser of (i) the Discount Rate applicable to such Lease or (ii) the yield of a Government of Canada bond with a term most closely matching the remaining average term of the Existing Lease.

- (b) Assignor shall make an Assignment of Rights in favour of Mutual in respect of the lease of the Upgraded Equipment (the "Upgrade Lease") upon the terms and conditions specified in this Agreement; and
- (c) The discounted present value of the payments to be made under the Upgrade Lease shall not be less than the present value of the amounts remaining to be paid under the Existing Lease.

Where Mutual has not entered into a binding agreement to fund such upgrade, such repurchase shall be on the terms set out in Section 11.02.

11.02 Repurchase. Except for circumstances provided for in Section 11.01, Assignor may at any time during the term of this Agreement repurchase from Mutual the Assigned Rights relating to any Assigned Lease upon payment to Mutual of the present value of the amounts remaining payable under such Lease discounted at the lesser of (i) the Discount Rate applicable to such Lease or (ii) the yield of a Government of Canada bond with a term most closely matching the remaining average life of the Assigned Lease.

12. MISCELLANEOUS

12.01 Termination. During the currency of any Assigned Lease and for such period thereafter during which the obligations of Assignor or Mutual with respect to such Lease remain unperformed, then neither party shall be permitted to terminate this Agreement as it affects the obligations of the parties in respect of such Lease and any Master Lease, Summary or any other document delivered pursuant hereto in respect of such Lease provided, however, that Mutual has the arbitrary right to terminate its obligation to make further payments to Assignor in respect of the assignment of Leases upon the giving of 60 days' prior written notice.

12.02 Amendment of Lease. No Lease, Guarantee, Master Lease Summary or any other document delivered pursuant hereto may be amended in any material respect except with the prior written consent of Mutual. Any proposed amendment to such documents, together with a request for consent to such amendments, shall be delivered to Mutual and Mutual shall be allowed five (5) Business Days to consider the proposed amendments and request for consent.

12.03 Confidentiality. Any information or material which is transmitted by one party to the other party pursuant to this Agreement shall be treated as confidential by the recipient and protected to the same degree as such recipient protects its own confidential information, provided that in the event Mutual decides, in its sole discretion, to assign any or all of its interest in this Agreement, any Lease, any Security Agreement or any other document delivered pursuant hereto to any affiliate of Mutual, Assignor hereby consents to the furnishing by Mutual to such affiliate of such information respecting such documents and the transactions described therein as Mutual, in its sole discretion, may deem to be necessary or appropriate for the purposes of negotiating and concluding such assignment.

12.04 Employment. Nothing contained in this Agreement shall be construed to constitute Assignor and Mutual partners or agents, except as expressly stated herein, and neither party shall have any authority to bind the other in any respect except as expressly stated herein.

12.05 Discharge of Security Interests. If Mutual is paid all amounts set out in the Summary as payable in respect of a particular Assigned Lease and if Assignor shall observe and perform the terms of this Agreement then Section 6.01(r) shall thereafter no longer apply with respect to such Assigned Lease and the rights and obligations hereby granted to Mutual with respect to such Assigned Lease shall cease except as hereinafter provided, and thereupon Mutual shall at the request of Assignor, its successors or assigns, cancel and discharge at the expense of Assignor, its successors or assigns, the security interest with respect to such Assigned Lease created under this Agreement and execute and deliver to Assignor, its successors and assigns such deeds and other instruments as shall be requisite to cancel and discharge the security interest hereby created with respect to such Assigned Lease.

12.06 Expenses. Whether or not the transactions herein contemplated shall be consummated, Assignor on demand shall pay or cause to be paid, and will indemnify Mutual in respect of, all expenses incurred in connection with the preparation, negotiation and settlement of this Agreement, the Master Reserve Fund Agreement and all other documentation provided for or contemplated herein or therein, with the transactions contemplated hereby, with any amendment, modification or waiver (whether or not the same shall become effective) hereto or thereto and with the administration, protection and enforcement of any of the rights and remedies of Mutual hereunder or thereunder or contemplated hereby or thereby, including without limitation the fees and disbursements (determined on a solicitor-and-his-own-client basis) of Mutual's counsel and of any local counsel retained by it

12.07 Judgment Currency. The obligations of Assignor pursuant to this Agreement and the Bulk Assignments to make payments in Canadian dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any other currency except to the extent to which such tender or recovery shall result in the effective receipt by Mutual of the full amount of Canadian dollars payable or expressed to be payable under this Agreement and the Bulk Assignments and accordingly the obligation of Assignor shall be enforceable as an alternative or an additional cause of action for the purpose of recovery in the other currency of the amount (if any) by which such effective receipt shall fall short of the full amount of Canadian dollars payable or expressed to be payable under this Agreement and shall not be affected by judgment being obtained for any other sums due under this Agreement or any Bulk Assignment.

12.08 Counterparts. This Agreement may be executed in counterparts, but such counterparts shall together constitute one and the same instrument.

12.09 Term of Agreement. The term of this Agreement shall commence on the date hereof and shall continue until the final payment in full to Mutual of all amounts payable hereunder and under all Assigned Leases.

12.10 Further Assurances. Assignor agrees that at any time and from time to time after the execution and delivery of this Agreement it shall, upon the request of Mutual execute and deliver such further documents and do such further acts and things as Mutual may reasonably request in order to fully effect the purposes of this Agreement, any Lease, and any other document delivered pursuant hereto.

12.11 Rights, Remedies and Powers. Each and every right, remedy and power granted to Mutual hereunder shall be cumulative and shall be in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise, and every such right, remedy and power may be exercised by Mutual from time to time concurrently or independently and as often and in such order as Mutual may deem expedient. Any failure or delay on the part of Mutual in exercising any such right, remedy or power, or any abandonment or discontinuance of steps to enforce the same, shall not constitute a waiver of same or any other provision of this Agreement.

12.12 Modification, Waiver, Consent. Any modification or waiver of any provision of this Agreement shall not be effective in any event unless the same is in writing and signed by Mutual and Assignor and then such modification, waiver or consent shall be effective in the specific instance and for the specific purpose given. Any notice or demand on Assignor in any event not specifically required of Mutual hereunder shall not entitle Assignor to any other or future notice or demand in the same, similar or other circumstances unless specifically required herein.

12.13 Notice. Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be in writing and may be given by personal delivery or telecopy or may be sent by registered mail, postage prepaid, addressed to the party for which it is intended at its address as follows:

Assignor:

Bodkin Leasing Corporation, Bodkin Equipment Leasing Corporation and
Bodkin Capital Corporation
2150 Dunwin Drive, Unit 1
Mississauga, Ontario L5L 1C7

Attention: Mr. John Mitchell, C.A., Vice President
Fax: (905) 820-5559

Guarantor:

551520 Ontario Limited
2150 Dunwin Drive, Unit 1
Mississauga, Ontario L5L 1C7

Attention: Mr. Don Bodkin
Fax: (905) 820-5559

Mutual:

The Mutual Life Assurance Company of Canada
227 King Street South
Waterloo, Ontario
N2J 4C5

Attention: Corporate Loans
Fax: (519) 888-3868

Provided, however, that any party may change its address for purposes of receipt of any such communication by giving ten (10) days' prior notice of such change in the manner above prescribed. Any notice sent by registered mail as aforesaid shall be deemed to have been given on the fifth (5th) Business Day next following the mailing thereof. Any notice sent by telex, telecopy or delivered as aforesaid shall be deemed to have been received, in the case of telex or telecopy, on the day of dispatch thereof, or in the case of delivery, on the day of delivery. In the event of an actual or threatened disruption in postal service, notice shall be sent by telex, telecopy or delivered.

12.14 Entire Agreement. This Agreement, any Lease, Summary or any other document delivered pursuant hereto, contains the entire agreement between Mutual and Assignor with respect to the transactions described herein.



12.15 Successors, and Assigns. All the covenants, promises, stipulations and agreements of Assignor contained in this Agreement, any Lease, and related documents to which Assignor is a party shall bind Assignor and its respective successors and assigns. Neither party shall assign any of its rights hereunder or under any Lease, or any other document delivered pursuant hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld.

12.16 Survival of Agreements. All representations, warranties, covenants and agreements made herein or otherwise in writing in connection herewith by any party shall remain binding on such party and shall survive, shall continue in full force and effect and shall not merge in the execution, delivery and registration of any Lease, or any other document delivered pursuant hereto and the making of each and every Assignment hereunder.

12.17 Time of Essence. Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date first written above.


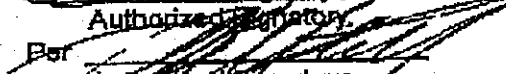
551520 ONTARIO LIMITED

Per 
Authorized Signatory
Per 
Authorized Signatory



**THE MUTUAL LIFE ASSURANCE
COMPANY OF CANADA**

Per 
Authorized Signatory
Per _____
Authorized Signatory

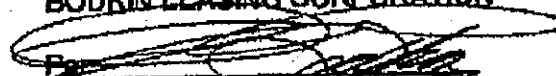

BODKIN CAPITAL CORPORATION

Per 
Authorized Signatory
Per 
Authorized Signatory

**BODKIN EQUIPMENT LEASING
CORPORATION**

Per 
Authorized Signatory
Per 
Authorized Signatory

BODKIN LEASING CORPORATION

Per 
Authorized Signatory
Per 
Authorized Signatory

SCHEDULE "A"

Master Reserve Fund Agreement

THIS AGREEMENT made as of the 26th day of November, 1997 between **BODKIN LEASING CORPORATION, BODKIN CAPITAL CORPORATION and BODKIN EQUIPMENT LEASING CORPORATION**, corporations incorporated under the laws of Canada ("Assignor"), **THE MUTUAL LIFE ASSURANCE COMPANY OF CANADA**, a corporation incorporated under the laws of Canada ("Mutual Life") and **THE MUTUAL TRUST COMPANY**, a corporation incorporated under the laws of Ontario (the "Trustee").

WHEREAS:

- A.** Assignor and Mutual Life have entered into a master assignment agreement of even date herewith (the "Master Assignment Agreement").
- B.** The Master Assignment Agreement requires the holding in trust of certain cash and/or Approved Securities.
- C.** Assignor will, pursuant to the Master Assignment Agreement, deliver cash and/or Approved Securities to the Trustee from time to time and the Trustee has been requested to hold such cash and/or Approved Securities in trust on the terms and conditions hereinafter set out.

NOW THEREFORE In consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), it is agreed as follows:

- 1.** The Trustee hereby covenants to and with Assignor and Mutual Life to hold all cash and Approved Securities delivered to the reserve fund pursuant to the Master Assignment Agreement (all of which amounts are collectively hereinafter referred to as the "Reserve Fund") in trust upon and subject to the terms and conditions of this Agreement.
- 2.** All capitalized terms not defined herein shall have the respective meanings ascribed thereto in the Master Assignment Agreement.
- 3.** The amounts in cash comprising the Reserve Fund shall be deposited in the name of the Trustee in an interest bearing account in a Canadian trust company or chartered bank or may be deposited in the deposit department of the Trustee in a 30 day term deposit account, if such an account is offered by the Trustee. All interest earned on amounts comprising the Reserve Fund shall be held by the Trustee and shall be deemed to be part of the Reserve Fund. All dividends paid in respect of Approved Securities contributed to the Reserve Fund shall be held by the Trustee and shall be deemed to be part of the Reserve Fund. Assignor shall be responsible for any taxes payable in respect of such interest or dividends.

4. Subject to Sections 5 and 8, the Trustee shall hold the Reserve Fund until the date which is the earlier of (i) the date upon which the Master Assignment Agreement and all obligations of the parties thereunder are terminated pursuant to Section 12.01 of the Master Assignment Agreement (the "Expiry Date") and (ii) the date on which Mutual Life and Assignor deliver to the Trustee a direction executed by both Mutual Life and Assignor regarding the disposition of the Reserve Fund or any portion thereof.

5. Notwithstanding Section 4, upon delivery to the Trustee by Mutual Life of a certificate (a "Certificate") signed on behalf of Mutual Life by an authorized officer of Mutual Life certifying (i) that there has been a Default, and (ii) the amounts owing by Assignor to Mutual Life, (whether or not such amounts are owing as a result of such Default) or the amount of the losses suffered by Mutual Life as a result of the transactions contemplated in the Master Assignment Agreement (and for the purposes of this Agreement, the Certificate shall be conclusive as to the matters certified therein), Mutual Life shall, subject to Section 7, be entitled to full payment from the Reserve Fund of such amount or amounts certified in the Certificate. Such payment may be satisfied by the delivery to Mutual Life of cash, Approved Securities or some combination thereof which has an aggregate market value on the date of delivery equal to the amount specified in the Certificate. Mutual Life may deliver a Certificate to the Trustee from time to time at any time after a Default has occurred and there are amounts owing by Assignor to Mutual Life or losses suffered by Mutual Life. Forthwith after delivery of a Certificate to the Trustee, Mutual Life shall deliver a copy thereof to Assignor.

6. Notwithstanding the provisions of Section 5 of this Agreement, Assignor shall have the option to make a cash payment to Mutual Life in the amount specified in the Certificate rather than transfer any Approved Securities. Such cash payment will be in full satisfaction of the amounts owing under Section 5 and the Trustee will have no obligation to make a payment from the Reserve Fund.

7. Subject to Sections 5 and 8, on the Expiry Date Assignor shall be entitled to receive all cash and Approved Securities comprising the Reserve Fund.

8. All costs and expenses incurred by the Trustee as a result of its obligations under this Agreement shall be the responsibility of Assignor. The Trustee may, before any payment from or release of the Reserve Fund pursuant to the terms hereof, deduct the said costs and expenses from the Reserve Fund. Such deduction shall not in any way release or limit Assignor from its obligations to pay the Trustee any of the Trustee's costs or expenses which were not satisfied by the Reserve Fund. Trustee fees shall be \$500.00 per annum subject to an annual review.

9. During the term of the Master Assignment Agreement, the Trustee shall account to Assignor and Mutual Life at three month intervals commencing three months from the date of the Master Assignment Agreement in respect of the Reserve Fund held by the Trustee. Any amounts comprising the Reserve Fund on such dates which are in excess of 6.5 % of the then Net Book Value of the Receivables in respect of the Assigned Leases shall, upon receipt of a direction from Mutual Life and after deduction of any amounts owing to the Trustee hereunder, be paid to Assignor at that time. For the purposes of the foregoing, the value of the Reserve Fund at any time shall be the sum of all cash in the Reserve Fund plus 80% of the market value as at the day of

calculation of all Approved Securities in the Reserve Fund. Trustee's account aforesaid shall separately show the balance in the Reserve Fund at the beginning of the reporting period, payments into the Reserve fund during the period, interest earned each month and in the aggregate at the end of each fiscal period, costs and expenses, disbursements from the Reserve Fund during the period pursuant to the provisions of the Master Assignment Agreement and the Master Reserve Fund Agreement to Mutual Life and/or Assignor and the balance in the Reserve Fund at the end of the reporting period.

10. The Trustee may employ or retain such counsel, accountants or other experts or advisors that it may reasonably require for the purpose of discharging its duties hereunder and may pay reasonable remuneration for all services so performed by any of them, without taxation of costs of any counsel, and the Trustee shall not be responsible for any misconduct on the part of any of them. Assignor shall have full rights of subrogation and does hereby claim such rights in respect of actionable rights of Trustee against counsel, accountants, auditors, experts or other advisors of Trustee for any misconduct on the part of any of them.

11. The Trustee may resign its trust and be discharged from all further duties and liabilities hereunder by giving to Assignor and Mutual Life not less than 30 days notice in writing or such shorter notice as Assignor and Mutual Life may accept as sufficient. While the Trustee is maintaining the Reserve Fund pursuant to this Agreement, Mutual Life shall have the power at any time to remove the Trustee and to appoint a new trustee in its stead. In the event of the Trustee resigning or being removed as aforesaid or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, Mutual Life shall forthwith appoint a new trustee who shall be a corporation authorized to carry on the business of a trust company in the Province of Ontario. Any new trustee so appointed shall be subject to removal as aforesaid. On any such appointment, the new trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee without any further assurance, conveyance, act or deed, but there shall be immediately executed, at the expense of the party requesting the change of trustee, all such conveyances or other instruments as, in the opinion of counsel to the new trustee, may be necessary or advisable for the purpose of assuring the same to the new trustee. At the request of Mutual Life or the new trustee, the retiring Trustee, upon payment of the amounts, if any, due to it pursuant to Section 8, shall duly assign, transfer and deliver to the new trustee all money held and all records kept by the retiring Trustee hereunder or in connection therewith.

12. In the exercise of the rights, duties and obligations prescribed or conferred by the terms of this Agreement, the Trustee shall act honestly and in good faith with a view to the best interests of Assignor and Mutual Life and shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

13. The Trustee hereby accepts the trusts in this Agreement declared and provided for and agrees to perform the same upon the terms and conditions herein set forth and in trust for Assignor and Mutual Life, subject to all the terms and conditions herein set forth.

14. The acceptance by the Trustee of its duties and obligations under this Agreement is subject to the following terms and conditions, which the parties hereto agree shall govern and control with respect to the Trustee's rights, duties, liabilities and immunities:

- (a) the Trustee shall be protected in acting upon any certificate, written notice, request, waiver, consent, receipt, statutory declaration or other paper or document furnished to it, and signed by Assignor or Mutual Life or any one or more of them as may be required hereunder, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be;
- (b) except for its acts of negligence, the Trustee shall not be liable for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law;
- (c) the Trustee shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by it in writing, and signed by Assignor and Mutual Life and, if its duties herein are increased, unless it shall have given its prior written consent thereto; and
- (d) this Agreement may be amended or canceled by and upon written notice to the Trustee at any time given by Assignor and Mutual Life jointly, but the duties or responsibilities of the Trustee may not be increased and the fees and expenses payable to it may not be changed without its consent.

15. Any notice, request, demand, consent, approval or other communication provided or permitted hereunder shall be in writing and may be given by personal delivery or telecopy or may be sent by registered mail, postage prepaid, addressed to the party for which it is intended at its address as follows:

In the case of Assignor:

Bodkin Leasing Corporation, Bodkin Equipment Leasing Corporation and
Bodkin Capital Corporation
2150 Dunwin Drive, Unit 1
Mississauga, Ontario L5L 1C7

Attention: Mr. John Mitchell, C.A., Vice President
Fax: (905) 820-5559

In the case of Mutual Life:

The Mutual Life Assurance Company of Canada
227 King Street South
Waterloo, Ontario
N2J 4C5

Attention: Corporate Loans
Fax: (519) 888-3666

In the case of the Trustee:

The Mutual Trust Company
Suite 400
70 University Avenue
Toronto, Ontario
M5J 2M4

Attention: Corporate and Personal Trust Department
Fax: (416) 598-7837

Provided, however, that any party may change its address for purposes of receipt of any such communication by giving ten (10) days' prior notice of such change in the manner above prescribed. Any notice sent by registered mail as aforesaid shall be deemed to have been given on the fifth (5th) Business Day next following the mailing thereof. Any notice sent by telex, telecopy or delivered as aforesaid shall be deemed to have been received, in the case of telex or telecopy, on the day of dispatch thereof, or in the case of delivery, on the day of delivery. In the event of an actual or threatened disruption in postal service, notice shall be sent by telex, telecopy or delivered.

16. This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein.

17. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby, and any such invalid, illegal or unenforceable provisions shall be deemed to be severable.

18. This Agreement may be executed in counterparts, but such counterparts shall together constitute one and the same instrument.

19. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

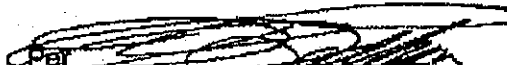

20. The parties hereto shall from time to time execute and deliver all such other and further deeds, documents, instruments and assurances as may be necessary or required to carry into force and effect the purpose and intent of this Agreement.

21. The term of this Agreement shall commence on the date hereof and shall continue until all amounts constituting the Reserve Fund shall have been paid out pursuant to the terms hereof.


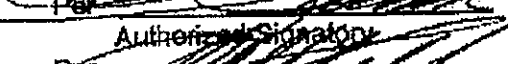
22. This Agreement and any document delivered in connection herewith, constitute the entire Agreement of the parties hereto in connection with the subject matter hereof.

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



BODKIN CAPITAL CORPORATION

Per 
Authorized Signatory
Per 
Authorized Signatory

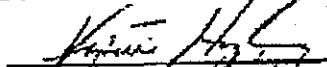

BODKIN EQUIPMENT LEASING CORPORATION

Per 
Authorized Signatory
Per 
Authorized Signatory


BODKIN LEASING CORPORATION

Per 
Authorized Signatory
Per 
Authorized Signatory

THE MUTUAL TRUST COMPANY

Per 
Authorized Signatory
Per 
Authorized Signatory

THE MUTUAL LIFE ASSURANCE COMPANY OF CANADA

Per 
Authorized Signatory
Per _____
Authorized Signatory

SCHEDULE "B"**SUMMARY**

SCHEDULE "C"

Bulk #:

ASSIGNMENT OF RIGHTS

TO: THE MUTUAL LIFE ASSURANCE COMPANY OF CANADA

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Bodkin Leasing Corporation, Bodkin Capital Corporation and Bodkin Equipment Leasing Corporation, hereby grants unto The Mutual Life Assurance Company of Canada an Assignment of Rights (as defined in the Master Assignment Agreement described below) in respect of the Leases and other financing agreements described in the Bulk Assignment Summary attached.

THIS ASSIGNMENT is made pursuant to the Master Assignment Agreement made as of the ____ day of ____, 19__ between The Mutual Life Assurance Company of Canada and Bodkin Leasing Corporation, Bodkin Capital Corporation and Bodkin Equipment Leasing Corporation and is subject in all respects to the terms and conditions thereof.

THE UNDERSIGNED hereby confirms that the representations and warranties set forth in section 5.01 of the Master Assignment Agreement are true and correct as of the date hereof, that there is no default under Article 8 of the Master Assignment Agreement which is continuing and no other condition, event, act or omission has occurred which, with the giving of notice, lapse of time or both would constitute a default.

THE ASSIGNMENT PRICE payable by The Mutual Life Assurance Company of Canada in respect of the Bulk Assignment provided for herein shall be \$ _____.

DATED this _____ day of _____, 1997

BODKIN CAPITAL CORPORATION

Per _____
Authorized Signatory
Per _____
Authorized Signatory

**BODKIN EQUIPMENT LEASING
CORPORATION**

Per _____
Authorized Signatory
Per _____
Authorized Signatory

BODKIN LEASING CORPORATION

Per _____
Authorized Signatory
Per _____
Authorized Signatory

Effective as of May 1, 2000.

AMENDMENT TO MASTER ASSIGNMENT AGREEMENT

BETWEEN

CLARICA LIFE INSURANCE COMPANY
(Clarica)

OF THE FIRST PART

AND

BODKIN LEASING CORPORATION, BODKIN EQUIPMENT
LEASING CORPORATION and BODKIN CAPITAL
CORPORATION
(collectively referred to as BCL)

OF THE SECOND PART

AND

551520 ONTARIO LIMITED
(Guarantor)

OF THE THIRD PART

WHEREAS Clarica and BCL entered into a Master Assignment Agreement dated as of the 26th day of November 1997.

AND WHEREAS the parties wish to amend certain terms and conditions and provisions of the Master Assignment Agreement in order to, *inter alia*, more accurately reflect the transactions contemplated thereby and to otherwise clarify the rights and obligations and intentions of the parties thereto.

NOW THEREFORE THIS AMENDMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), the parties hereby covenant and agree as follows:

Unless otherwise defined herein, all capitalized terms used in this amendment shall have the respective meanings ascribed thereto in the Master Assignment Agreement. Unless otherwise provided, all references herein to Articles or Sections are references to Articles and Sections of the Master Assignment Agreement.

1. The parties hereby concur in this amendment to the Master Assignment Agreement and upon execution and delivery of this Amendment, the Master Assignment Agreement and this Amendment shall be deemed to constitute the entire Master Assignment Agreement. Subject as hereinafter set forth, the Master Assignment Agreement is hereby confirmed in all respects.
2. The parties agree that this Amendment shall have the effect as of the 1st day of May 2000.
3. The Master Assignment Agreement is hereby renamed the "Master Purchase and Assignment Agreement" and all references thereto in the Master Assignment Agreement are hereby deemed to be references to the "Master Purchase and Assignment Agreement" as amended by this agreement. All references to "Assigner" are similarly replaced with "BCL" within the Agreement and all Schedules.
4. The third recital of the Master Assignment Agreement is hereby deleted in its entirety and replaced with the following:

"AND WHEREAS BCL wishes from time to time, to make Bulk Assignments to Clarica including an absolute assignment of the Purchased Assets (as defined below) and an assignment by way of security of the Assigned Assets (as defined below), all on the terms and conditions hereinafter set forth;
5. Insert in the second line of the definition "Assigned Leases" the phrase "by way of security" after the word "hereof" and before the word "and".
6. The definition of "Assignment of Rights" in Section 1.01 is hereby amended
 - (i) by deleting clause (a) thereof and replacing it with the following:

"an absolute assignment to Clarica, its successors and assigns, of all present and future Lease Receivables in respect of such Lease;"
 - (ii) by deleting clause (c) thereof in its entirety and replacing it with the following:

"an assignment and transfer to Clarica, its successors and assigns of the benefit, in common with BCL, of all covenants by the Lessee under such Lease, including any security interest or other form of security granted by the Lessee, and the benefit of all indemnities and covenants with respect to maintenance

and repair of Equipment, payment of rent, use of Equipment, and insurance obligations, other than the benefit of those covenants specifically assigned, transferred or granted pursuant to clauses (a), (b), (d) or (e) of this definition;"

- (iii) by adding to the end of clause (a) thereof the following:

"the items identified in clauses (a) through (c) of the definition of "Assignment of Rights" are hereinafter referred to as the "Purchased Assets";" and

- (iv) by adding to the end of clause (f) thereof the following:

"the items identified in this clause (f) of the definition of "Assignment of Rights" are hereinafter referred to as the "Assigned Assets";

7. Amend Section 5.01(q) by adding to the end of the clause the following:

"in respect of the Assigned Assets".

8. In Section 9.04 Remedies Upon Default insert in the 3rd line after the word "Agreement" and before the word "and" the phrase "Assigned Assets". In the 10th line delete the phrase that commences with "of the security interest" and ends with the phrase "Bulk Assignments" and replace with the following:

"of the security interest in the Assigned Assets created by the Bulk Assignments and this Agreement".

9. The form Schedule "C" attached to the Master Assignment Agreement is amended by adding to the end of the sentence of the first paragraph thereof the following:

"Such Assignment of Rights includes an absolute transfer and assignment of the the Purchased Assets in respect of such Leases and a first fixed charge of and and continuing security interest in and to the related Assigned Assets.

10. This Amendment shall be construed and enforceable in accordance with the rights of the parties hereto shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

11. The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary and desirable to give full effect to the terms of this Amending Agreement.

12. The Guarantor acknowledges and consents to the amendments to the Master Assignment Agreement.

IN WITNESS WHEREOF the parties have caused this Amending Agreement to be duly executed as of the date and year first above written.

CLARICA LIFE INSURANCE COMPANY


(Authorized Signature)

BODKIN LEASING CORPORATION


(Authorized Signature)


(Authorized Signature)

BODKIN EQUIPMENT LEASING CORPORATION


(Authorized Signature)


(Authorized Signature)

BODKIN CAPITAL CORPORATION

(Authorized Signature)

(Authorized Signature)

551520 ONTARIO LIMITED

(Authorized Signature)

(Authorized Signature)

Effective as of December 14, 2005.

**SECOND AMENDMENT TO MASTER
PURCHASE AND ASSIGNMENT AGREEMENT**

BETWEEN:

SUN LIFE ASSURANCE COMPANY OF CANADA
(hereinafter referred to as "Sun Life")

OF THE FIRST PART

AND

**BODKIN LEASING CORPORATION and BODKIN CAPITAL
CORPORATION**
(hereinafter referred to as the "Existing Bodkin Companies")

OF THE SECOND PART

AND

BODKIN FINANCIAL CORPORATION
(hereinafter referred to as the "Bodkin Financial Corporation")

OF THE THIRD PART

AND

BODKIN EQUIPMENT LEASING CORPORATION
(hereinafter referred to as the "Bodkin Equipment Leasing")

OF THE FOURTH PART

AND

551520 ONTARIO LIMITED
(hereinafter referred to as the "551520")

OF THE FIFTH PART

WHEREAS The Mutual Life Assurance Company of Canada ("Mutual Life"), the Existing Bodkin Companies, Bodkin Equipment Leasing Corporation and 551520 entered

into a Master Assignment Agreement dated as of the 26th day of November 1997 (the "Initial Master Assignment Agreement").

AND WHEREAS by Letters Patent of Conversion effective July 21, 1999, the name of Mutual Life was changed to Clarica Life Insurance Company ("Clarica").

AND WHEREAS the parties to the Initial Master Assignment Agreement amended the Initial Master Assignment Agreement by an Amendment to Master Assignment Agreement effective as of May 1, 2000 (the "First Amending Agreement").

AND WHEREAS by Letters Patent of Amalgamation under the *Insurance Companies Act* (Canada) dated December 20, 2002 and effective at 11:59 p.m. on December 31, 2002, Clarica and Sun Life Assurance Company of Canada were amalgamated and continued as one company under the name Sun Life Assurance Company of Canada (and in French, Sun Life du Canada, compagnie d'assurance-vie).

AND WHEREAS the Initial Master Assignment Agreement as amended by the Amending Agreement is herein referred to as the "Master Purchase and Assignment Agreement".

AND WHEREAS 551520 is the Guarantor under the Master Purchase and Assignment Agreement.

AND WHEREAS 551520 and Bodkin Financial Corporation will be amalgamated effective the date following the Effective Date (defined below) and the amalgamated corporation will be continued under the name Bodkin Financial Corporation (the "Guarantor Amalgamation").

AND WHEREAS the parties wish to amend certain terms and conditions and provisions of the Master Purchase and Assignment Agreement as of and from the effective date of this Agreement noted at the top of this Agreement (the "Effective Date").

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), the parties hereby covenant and agree as follows:

Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the respective meanings ascribed thereto in the Master Purchase and Assignment Agreement.

1. The parties hereby agree as follows:

- (a) From and after the Effective Date, Bodkin Equipment Leasing is removed as a party to the Master Purchase and Assignment Agreement, and shall have no further rights under it.

- (b) Sun Life acknowledges the Guarantor Amalgamation, and each of 551520 and Bodkin Financial Corporation confirms that all obligations of 551520 as Guarantor under the Master Purchase and Assignment Agreement shall continue in full force and effect as obligations of the amalgamated corporation following the Guarantor Amalgamation.
- (c) The provisions of this paragraph (c) shall apply in the event the Guarantor Amalgamation for any reason is not effected on the date following the Effective Date. Bodkin Financial Corporation hereby assumes all obligations of 551520 provided for in the Master Purchase and Assignment Agreement, as if Bodkin Financial Corporation had also had been an original signatory, as Guarantor, to the Master Purchase and Assignment Agreement. Without limiting the foregoing, Bodkin Financial Corporation hereby assumes the obligations set out in Section 10 of the Master Purchase and Assignment Agreement on a joint and several basis with the Existing Bodkin Companies and 551520, and waives any and all defences to its liability that could be asserted in connection with any developments whatsoever (whether or not known to Bodkin Financial Corporation and whether or not known to any other party) that may have occurred prior to the date following the Effective Date.
2. This Agreement shall be construed and enforceable in accordance with the rights of the parties hereto shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
 3. The parties hereto agree, from time to time, to enter into such further agreements and to execute all such further instruments as may be reasonably necessary and desirable to give full effect to the terms of this Agreement.
 4. The Existing Bodkin Companies, Bodkin Financial Corporation and Sun Life confirm that the Master Purchase and Assignment Agreement remains in full force and effect, unamended except as in this Agreement provided.

IN WITNESS WHEREOF the parties have caused this Agreement to be duly executed as of the date and year first above written.

SUN LIFE ASSURANCE COMPANY OF CANADA

Per: _____
 Name: _____
 Title: _____

Per: _____
 Name: _____
 Title: _____

We have authority to bind the Corporation.

BODKIN LEASING CORPORATION

Per: [Signature]
Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE PRESIDENT & CFO

Per: [Signature]
Name: WILLIAM PATTON
Title: EXECUTIVE VICE PRESIDENT, SALES & MARKETING
I/we have authority to bind the Corporation.

BODKIN CAPITAL CORPORATION

Per: [Signature]
Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE PRESIDENT & CFO

Per: [Signature]
Name: WILLIAM PATTON
Title: EXECUTIVE VICE PRESIDENT, SALES & MARKETING
I/we have authority to bind the Corporation.

BODKIN FINANCIAL CORPORATION

Per: [Signature]
Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE PRESIDENT & CFO

Per: [Signature]
Name: WILLIAM PATTON
Title: EXECUTIVE VICE PRESIDENT, SALES & MARKETING
I/we have authority to bind the Corporation.

BODKIN EQUIPMENT LEASING CORPORATION

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____
I/we have authority to bind the Corporation.

551520 ONTARIO LIMITED

Per: _____

Name: _____

Title: _____

Per: _____

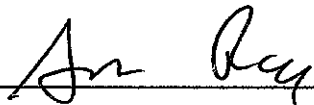
Name: _____

Title: _____

I/we have authority to bind the Corporation.

TAB H

**THIS IS EXHIBIT "H" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in cursive script, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**



Private Fixed Income

Brad Baechler
Associate Director, Lease Finance
Bus: (519) 888-2556
Fax: (519) 888-3666
Email: brad.baechler@sunlife.com

Sun Life Financial
227 King Street South
Waterloo, ON N2J 4G5

February 24, 2010

Mr. Paul Royds
Bodkin Leasing Corporation
2160 Dunwin Drive Unit #1
Mississauga, ON L5L 1G7

Dear Paul

We are pleased to inform you that Sun Life Assurance Company of Canada ("Sun Life") has approved the following transaction under the listed terms and conditions.

Terms and Conditions

Seller / Servicer:	Bodkin Leasing Corporation and Bodkin Capital Corporation (joint and several i.e. both corporations share the risk of seller and servicer equally.)
Funder:	Sun Life Assurance Company of Canada ("Sun Life")
Standby/Backup Servicer:	Lease Administration Corporation ("LAC")
Facility Amount:	\$80.0 million
Purpose:	Secure/fund bulk tranches of equipment and transportation leases originated by Bodkin, as defined in the Master Purchase & Assignment Agreement ("MPAA") as "Assigned Leases".
Facility Expiry:	Up to and including January 31st, 2011.
Bulk Tranches:	Bulk Tranches will consist of contracts that have been initially originated and approved by Bodkin and submitted to Sun Life for acceptance and subsequently, securitization. Bodkin will have performed the initial underwriting of the contracts being presented. Prior to funding the contracts, Sun Life will review the proposed contracts for both credit quality and documentation on a sampling basis. (see "Approval Limits and Audit Review" below). Acceptance of any transaction presented by Bodkin is at Sun Life's sole discretion. Average contract value is expected to be less than \$50,000 for both vehicle and equipment leases. Average term of the contracts is expected to be in the 40 to 45 month range, with vehicle lease terms ranging from 12 to 60 months and equipment terms ranging from 12 to 66. The maximum term is 66 months. Contracts securitized will be guaranteed by the obligor. (E.g. final bullet payments in leases are guaranteed by the obligor in the contract). The facility also has some vendor guaranteed residuals.

**Approval Limits
and Audit Review:**

Bodkin currently has 15 larger concentrated exposures to single names. (i.e. >\$300,000 to one individual corporate entity)

Any new or incremental potential exposures >= \$100,000 and <=\$1,000,000 of the Net Outstanding Balance (i.e. current exposure) at the time of each bulk tranche will be reviewed and specifically approved with such approvals valid until the next facility renewal.

All exposures <\$100,000 at the time of each bulk tranche would be audited via sampling 10% of the remaining contracts in the bulk tranche.

**Initial Payment
Amount:**

The Initial Payment Amount of each Bulk Tranche will be determined by calculating the present value of the consolidated cash flows of the contracts, at the Funding Rate.

Funding Rate:

The funding/discount rate will be determined by adding a spread of 325bps net to Sun Life (which is reviewed on a quarterly basis referred to as Quarterly Rate Reset) to the yield of the Government of Canada Bond rate most closely matching the average life of the tranche, compounded monthly. The Funding Rate will be set two days prior to the purchase close date.

Note: The Quarterly Rate Reset for all bulk facilities is approved by Sun Life, in our sole discretion.

The next rate reset is scheduled for April 15, 2010.

Market Disruption:

If at any time:

(a) the financial markets are closed or so severely disrupted that in the opinion of Sun Life settling or resetting the discount rate is impossible or impractical on any day contemplated, or

(b) conditions in financial markets are such that Sun Life has determined it will not accept some or all funding requests related to the applicable facility or facilities, then without limiting in any manner whatsoever any other rights, discretions or options that Sun Life has under the arrangements set out herein or any arrangements modified by the provisions herein, Sun Life may at its sole option:

(1) elect to set or reset the discount rate on another date, to have effect for such period as Sun Life may in its sole discretion determine, and/or

(2) Elect not to accept or purchase or fund some or all of the tranches or leases or other receivables presented to it under such arrangements.

Security:

- First fixed charge on all collateral assets
- First assignment of all material contracts, agreements, leases, trademarks, etc.
- Assignment of all insurance proceeds.
- Cash Reserve (see below)

**Cash Reserve:
(Over
Collateralization &
Cross
Collateralization)**

Book 1:

Book 1 will be contained as pre-existing tranches amortize down, with a release level of 8.5% (increased from 7.5%). Each Bulk Tranche will be cross-collateralized for the purpose of defaults.

On a quarterly basis, the amount for Book 1 which is in excess of 8.5% of the aggregate of the then current value of all the purchases to that date may be released to the Seller, provided Bodkin is compliant with all covenants (for Book 1 and Book 2 combined), as determined by consolidating the discounted outstanding balance for all existing purchases, calculated at their respective Funding Rates. The Cash Reserve Account will contain the reserve amount held back from all purchases. The aggregate outstanding balance to be used in the calculation of the maximum required balance will include the current outstanding balance of all purchases completed under all approvals. Purchases from subsequent

approvals, if any, will also be cross collateralized.

Book 2:

For Book 2 each purchase will be over collateralized by a 6.75% amount (increased from 5.25%) held back from the Initial Payment Amount and deposited to the Cash Reserve. Each Purchase will be cross collateralized for the purpose of obligor defaults.

On a quarterly basis, the amount for Book 2 which is in excess of 8.5% (increased from 7.0%) of the aggregate of the then current value of all the purchases to that date may be released to the Seller, provided Bodkin is compliant with all covenants, as determined by consolidating the discounted outstanding balance for all existing purchases, calculated at their respective Funding Rates. The Cash Reserve Account will contain the reserve amount held back from all purchases. The aggregate outstanding balance to be used in the calculation of the maximum required balance will include the current outstanding balance of all purchases completed under all approvals. Purchases from subsequent approvals, if any, will also be cross collateralized.

For clarity, the limited recourse first loss guarantee from Bodkin Financial Corporation has been removed entirely, and replaced by a higher cash reserve holdback on all future tranches, as outlined above.

Note: The facility is under an Event of Termination (EOT). Funding is continuing, and the Cash Reserve is in lock up. A waiver of the EOT will only be considered when the portfolio shows consistent improved performance and the cash reserve is adequately funded. Any waiver is at the sole discretion of Sun Life.

Cash Reserve Floor:

Should the balance in the Cash Reserve (Book 1 and Book 2 reserves tracked separately) fall below 4.5% of the net outstanding balance (the Cash Reserve Floor), Bodkin will remit to Sun Life for deposit to the Cash Reserve, Other Receivables, to restore the Cash Reserve Floor.

Other Receivables will include, but not be limited to, cash received from end of lease purchase options, income derived by early buyouts, late interest, and any other form of sundry income derived from the contracts, which are in excess of the contracted payments.

Security Deposits:

Bodkin does not generally write contracts that include any form of security deposit. Should it collect security deposits from contracts in the future, a separate reserve account will be established with Sun Life Trust to hold those deposits on account to provide another layer of protection. If no default has occurred, security deposits related to specific leases will be released at end of lease term.

Standby Fee:

A Standby Fee will be assessed and measured annually (at the Program Termination Date or Facility Expiry date) on the unused portion of the Facility Limit. The calculation of the Standby Fee will be as follows: 75% of the Facility Limit less aggregate Initial Payment Amounts, multiplied by 0.50%.

Seller Covenants:

Financial Covenants:

1.) Tangible Net Worth (TNW) of Bodkin shall be no less than \$7.5mm;

Note: for clarity, TNW is defined as "the combined financial statement value of Shareholder's Equity, including the value of preferred shares and subordinated shareholder loans and Subordinated Debt minus intangible assets (deferred financing costs, leasehold improvements, goodwill, franchises, patent rights, Copyrights), amounts due by officers, subsidiaries and/or related parties."

2.) Total Debt/TNW cannot exceed 22.5 times;

Note: for clarity, Total Debt is defined as "the combined financial statement value of total liabilities, including subordinated debt *minus* accounts payable and accrued liabilities, customer security deposits, future income taxes, deferred securitization income (current and long term portion).

3.) Interest Coverage Ratio (Earnings Before Interest and Taxes/Interest) cannot be less than 1.75 times;

4.) Bodkin will provide within 60 days of each quarter end, internally prepared operating financial statements.

5.) Bodkin will provide within 120 days of each year end, audited financial statements of the organization.

Other Covenants

There is to be no change of control of the Seller or material change to the Seller's line of business during the term of the subject facility.

Bodkin will provide within 15 days of each month end to Sun Life, portfolio reporting outlining ending balances, activity, delinquencies, losses, etc. as well as Compliance Certificates (executed by Officers of Bodkin) stating that Bodkin is in compliance with its covenants and triggers under this Facility, and under its existing banking facilities (if applicable). Bodkin will also provide confirmation that no waivers exist under the banking facilities (if applicable).

Bodkin will provide monthly download files in a file format prescribed by Sun Life.

A formal Standby Servicer Agreement will be developed and implemented in 2010.

Bodkin will provide, where applicable, the Personal Guarantees of its shareholders to further indemnify Sun Life in the event any units are sold out of trust or against other fraudulent activity.

Cross Default Provision with other Funding Partners:

This securitization facility is cross defaulted with Bodkin's bank facilities (including off-balance sheet securitization facilities) such that a default under a bank facility may result in an immediate halt to any additional funding and a lock up of the Cash Reserve; and can result in Facility termination. For clarity, any waiver for a covenant breach under Bodkin's banking facilities must also be waived by Sun Life.

Lockup Triggers:

Delinquency: defined as, for any month, the ratio of (a) the outstanding balance on all obligations greater than 30 days overdue at the end of such month to (b) the aggregate outstanding balance as at the beginning of such month.

For both Book 1 and Book 2:

- rolling average Delinquency Ratio is greater than 3.0% on a rolling three month basis

Net Losses: are defined as, for any month, the sum, without duplication, of the outstanding balance of all obligations which are in default (i.e. repurchases) at the end of such month less any recoveries for such obligations received during such month. The Loss Ratio is the monthly net losses divided by the net present value at the beginning of each month. A lock-up trigger is considered breached when:

For Book 1:

- rolling average Loss Ratio (an annualized ratio) is greater than 3.5% on a rolling three-month basis; or
- rolling average Loss Ratio (annualized ratio) is greater than 2.5% on a rolling 12 month basis.

For Book 2:

- rolling average Loss Ratio (an annualized ratio) is greater than 2.5% on a rolling three month basis; or
- rolling average Loss Ratio (annualized ratio) is greater than 2.0% on a rolling 12 month basis.

Note: For Loss Reporting, Bodkin will look at each default, and if proceeds have not yet been received for a defaulted lease, they will apply a 50% expected recovery rate to that loss to be included as an estimate for net losses on a monthly basis. Actual recoveries are then updated to the reporting as they occur. Bodkin will provide a report to show actual recoveries compared to estimates, on a monthly basis.

A breach of any of the triggers may result in the immediate drawing of the cash reserve until ratios reach acceptable levels. Unresolved breaches may result in a halt of additional funding, and possible termination of the facility, based on Sun Life's sole discretion.

Obligor Defaults:

Obligor defaults will be charged to the Cash Reserve on an ultimate net loss basis, (i.e., an initial charge for the gross loss, subsequently replenished with proceeds / recoveries). The amount to be withdrawn will be the present value of the remaining cash flow of the lease calculated at the Funding Rate, less any recovery amounts.

Obligor defaults within 60 days of purchasing a Bulk Tranche will be put back to Bodkin, using this same calculation, and not charged to the Cash Reserve.

**Early Termination /
Purchase by
Obligor:**

Early buyouts or voluntary termination by Obligor ("Prepayments"), up to 10% of the original funded amount (based on the original funded amount prior to Program Termination Date or Facility Expiration Date), will be calculated by discounting the remaining payments at the lesser of the Funding Rate or the then remaining average life Canada Bond rate plus the indicative spread of the original bulk draw.

Prepayments, in excess of 10% of the original funded amount, will be calculated by discounting the remaining payments at the lesser of the Funding Rate or the then remaining average life Canada Bond rate.

**Obligor
Concentration &
Exposure:**

Exposures to any given Obligor shall not exceed 0.5% of the current outstanding balance (Book 1 and Book 2 combined) without prior approval of Sun Life.

Sun Life, in its sole discretion, may reject any obligor from the Bulk Tranche.

Purchased Assets:

Bodkin has entered into a Master Purchase and Assignment Agreement ("MPAA") with Sun Life for:

- The contracts and the related contract receivables.

As collateral to the purchase, Bodkin will provide to Sun Life:

- A first secured collateral charge on the leased equipment and the Other Receivables. Other Receivables would include, but not be limited to and of lease purchase options, income derived by early buyouts, late interest, insurance proceeds and any other form of sundry income derived from the contracts, which are in excess of the contracted payments.

Portfolio Management:

Bodkin will make a servicer advance at the beginning of each month for expected monthly collections. Bodkin will provide monthly reporting to Sun Life on the portfolio performance. This agency agreement can be terminated, should Sun Life deem that Bodkin is not performing its duties to their satisfaction, and another portfolio manager assigned. Bodkin will provide monthly reports to Sun Life covering delinquency, defaults, losses and recoveries. Computer downloads of portfolio data will also be provided.

Documentation:

- MPAA with Bodkin which will contain financial and portfolio covenants satisfactory to Sun Life
- Bulk Tranche Agreement and Schedule of Contracts
- Contracts (original; including delivery and acceptance)
- Proof of payment for equipment
- Proof of registrations
- Standard Bank waiver with each Bulk Tranche
- Subordination of Bank and Shareholders (any relevant prior secured parties)
- Master Reserve Fund Agreement
- Fraud Guarantee (to be negotiated)

Expenses:

All expenses incurred by Sun Life, including all out-of-pocket expenses, legal and reporting fees, backup Servicer fees, and other disbursements in respect of the negotiation, preparation, interpretation and enforcement of the documentation described above, whether or not such documentation is entered into, and all amendments or waivers thereto or thereof shall be for the account of Bodkin.

Legal Counsel:

Blake, Cassels and Graydon LLP

Governing Legal Agreement:

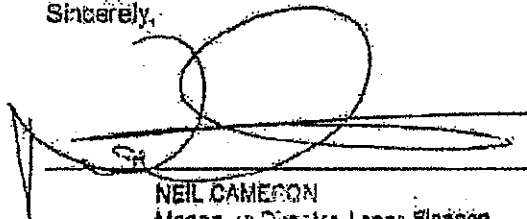
An MPAA governs this relationship with the latest version issued on November 26, 1997. A more thorough review of the agreement will take place during 2010 to determine whether a new agreement is required.

Anti Money Laundering and Anti Terrorism Compliance:

Sun Life has received a satisfactory "AML/ATF Information Statement", as well as a physical attestation from Bodkin, and is held on file. Any change in ownership will require a revised statement to be submitted to Sun Life.

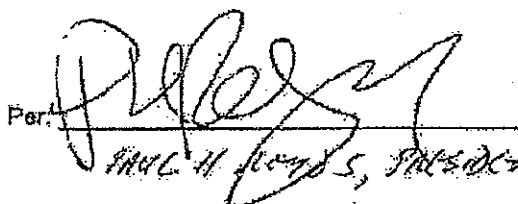
Please indicate your acceptance of the Terms and Conditions by signing below and returning one copy.

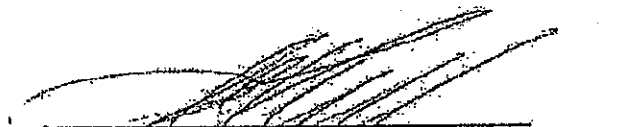
Sincerely,


NEIL CAMERON
Managing Director, Lease Finance
Private Fixed Income


JEFFERY MAYER
MANAGING DIRECTOR, LEASE FINANCE
PRIVATE FIXED INCOME

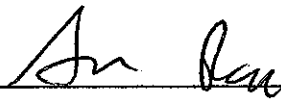
Accepted at Mississauga, Ontario this 24th day of February, 2010.

Per: 
PAUL H. JONES, President & CEO


JOHN D. MCFARLANE
Executive Vice-President & CFO

TAB I

**THIS IS EXHIBIT "I" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

PRIORITY/ INTER-CREDITOR AGREEMENT

THIS AGREEMENT dated as of the 11th day of December, 2005.

BETWEEN:

BANK OF MONTREAL, having a place of business at 155
Rexdale Boulevard, 4th Floor, Toronto, Ontario (Fax # (416) 744-
1582)

(hereinafter called "BMO")

- AND -

SUN LIFE ASSURANCE COMPANY OF CANADA, having a
place of business at 227 King Street South, Waterloo, Ontario (Fax
#(519) 888-3666)

(hereinafter called "Sun Life")

- AND -

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL
SERVICES INC.**, having a place of business at 522 University
Avenue, Toronto, Ontario, M9R 2V4 (Fax #416-598-2195)

(hereinafter called "Industrial")

- AND -

BODKIN FINANCIAL CORPORATION, a corporation
incorporated pursuant to the laws of the Province of Ontario,
having a place of business at 2150 Dunwin Drive, Unit 1,
Mississauga, Ontario (Fax #905-820-5559)

(hereinafter called "Financial")

- AND -

BODKIN LEASING CORPORATION, a corporation incorporated pursuant to the laws of Canada, having a place of business at 2150 Dunwin Drive, Unit 1, Mississauga, Ontario (Fax #905-820-5559)

(hereinafter called "Leasing")

- AND -

BODKIN CAPITAL CORPORATION, a corporation incorporated pursuant to the laws of Canada, having a place of business at 2150 Dunwin Drive, Unit 1, Mississauga, Ontario (Fax #905-820-5559)

(hereinafter called "Capital")

WHEREAS BMO has extended certain credit facilities to Financial which as of the date hereof are in the aggregate amount of approximately \$35,000,000;

AND WHEREAS each of Leasing and Capital have guaranteed the obligations of Financial to BMO;

AND WHEREAS Financial, Leasing and Capital (collectively referred to herein as the "Companies") have provided security over all of their respective assets and undertakings to BMO;

AND WHEREAS Sun Life provides certain securitization facilities in favour of the Companies pursuant to a Master Assignment Agreement dated as of November 26, 1997 among the Companies, 551520 Ontario Limited and The Mutual Life Assurance Company of Canada (a predecessor company to Sun Life) as amended by an Amendment to Master Assignment Agreement effective May 1, 2000 among the Companies and Clarica Life Insurance Company (the changed name of The Mutual Life Assurance Company of Canada and predecessor company to Sun Life) (collectively, the "**Sun Life Purchase Agreement**") whereby one or more of the Companies will, from time to time, transfer and assign to Sun Life all of its rights and remedies under certain Leases and will grant a security interest in the Sun Life Related Equipment, any documents of title or chattel paper relating to such Sun Life Related Equipment and all Proceeds thereof;

AND WHEREAS Sun Life has also extended certain subordinated credit facilities to Financial which as of the date hereof are in the aggregate amount of approximately \$3,000,000;

AND WHEREAS each of Leasing and Capital have guaranteed the obligations of Financial to Sun Life pursuant to the Sun Life Subordinated Debt;

AND WHEREAS the Companies have provided security over all of their respective assets and undertakings to Sun Life pursuant to the Sun Life Subordinated Debt;

AND WHEREAS Industrial provides certain funding to one or more of the Companies for the purpose of purchasing motor vehicles, either presently or hereafter acquired, (the "**Industrial Vehicles**") which such Company in turn leases to Industrial and each of such Companies has granted a security interest in the Industrial Vehicles to Industrial;

AND WHEREAS the Companies have agreed that they will maintain and deal with their respective assets in accordance with the provisions hereof.

NOW THEREFORE this Agreement evidences that in consideration of the premises, the mutual promises herein contained, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 For the purposes of this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- (a) "**Accounts**" means all book accounts and book debts and generally all accounts, claims, judgments, demands and monies now due or owing or accruing due or which may hereafter become due or owing, including claims against the Crown but excluding Proceeds (other than Proceeds of Accounts);
- (b) "**Accounts Receivable**" means Accounts and Account Records;
- (c) "**Account Records**" means all contracts, agreements, arrangements, documents, securities, instalments, bills, policies, writings, books, records (electronic or otherwise) and papers evidencing or otherwise relating to Accounts;
- (d) "**BMO Debt**" means all indebtedness, obligations and liabilities of the Companies to BMO, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, now existing or hereafter arising and howsoever evidenced;
- (e) "**BMO Default**" means the occurrence of any of the events described in Schedule A hereto;
- (f) "**BMO Security**" means all Encumbrances (whether now existing or created in future) affecting any assets of the Companies (whether present or future) and held by BMO to secure the BMO Debt or any part thereof;
- (g) "**Business Day**" means any day except Saturday, Sunday or a statutory holiday observed in the Province of Ontario;

- (h) **"Companies"** means Financial, Leasing and Capital and **"Company"** means any one of them;
- (i) **"Creditors"** means, collectively, BMO, Sun Life and Industrial, and **"Creditor"** means any one of them;
- (j) **"Default Notice"** has the meaning given thereto in Section 9.1;
- (k) **"Encumbrance"** means any mortgage, lien, pledge, assignment, charge, security interest, title retention agreement, lease, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes any bond, debenture or similar instrument issued under a deed of trust or similar instrument which constitutes an Encumbrance;
- (l) **"Industrial Assets"** means the Industrial Vehicles and any Accounts Receivable in connection with such Industrial Vehicles;
- (m) **"Industrial Security"** means all Encumbrances (whether now existing or created in future) affecting any assets of any of the Companies in favour of Industrial as more particularly described in the recitals hereto;
- (n) **"Industrial Vehicles"** has the meaning attributed thereto in the recitals;
- (o) **"Leases"** means any lease of any motor vehicles or equipment entered into by any of the Companies as lessor and includes the Accounts Receivables which relate to any specific Lease;
- (p) **"Material Breach"** means, in each case, the occurrence of a BMO Default or a Sun Life Default which is continuing;
- (q) **"Maximum BMO Principal Amount"** shall mean an amount equal to (a) \$27,000,000, plus (b) interest, fees and other costs and expenses which may become part of or added to the principal amount of the BMO Debt, minus (c) any permanent commitment reductions in any revolving credit facility;
- (r) **"Maximum Sun Life Principal Amount"** shall mean an amount equal to (a) \$3,000,000, plus (b) interest, fees and other costs and expenses which may become part of or added to the principal amount of the Sun Life Subordinated Debt.
- (s) **"Other Property"** means all property, tangible and intangible, real and personal, now or hereafter owned by any of the Companies, excluding Industrial Assets, Sun Life Assets, Sun Life Related Equipment and any Proceeds thereof;
- (t) **"Particular Assets"** has the meaning given to it in Section 1.6 hereof;

- (u) **"PPSA"** means the *Personal Property Security Act* (Ontario);
- (v) **"Prior Creditor"** has the meaning given to it in Section 1.6 hereof;
- (w) **"Proceeds"** means with respect to each of the Companies identifiable or traceable personal property in any form derived directly or indirectly from any dealing with any assets of such Company or the Proceeds therefrom, including without limitation any payment representing indemnity or compensation for loss of or damage to any such assets or the Proceeds therefrom (such as under insurance or expropriation);
- (x) **"Securities"** means, collectively, the BMO Security, the Industrial Security, the Sun Life Security and the Sun Life Subordinated Security and **"Security"** means any of the Securities;
- (y) **"Standstill Period"** has the meaning given thereto in Section 9.1;
- (z) **"Subordinate Creditor"** has the meaning given to it in Section 1.6 hereof;
- (aa) **"Sun Life Assets"** means the rights and remedies under any Leases which have been, now or in the future, purchased by Sun Life from any of the Companies pursuant to Sun Life Purchase Agreement, and for greater certainty includes all **"Purchased Assets"** under the Sun Life Purchase Agreement;
- (bb) **"Sun Life Debenture"** means the subordinated debenture issued by Financial in favour of Sun Life dated as of the date hereof in the original principal amount of \$3,000,000;
- (cc) **"Sun Life Default"** means the occurrence of any of the events described in Schedule B hereto;
- (dd) **"Sun Life Purchase Agreement"** has the meaning ascribed thereto in the recitals;
- (ee) **"Sun Life Related Equipment"** means all motor vehicles and equipment which is the subject matter of any Lease, the rights and remedies in respect of which have been, now or in the future, transferred pursuant to the Sun Life Purchase Agreement (either absolutely or as security) by any of the Companies to Sun Life, and for greater certainty includes all Equipment leased under a Lease, as the terms **"Equipment"** and **"Lease"** are defined in the Sun Life Purchase Agreement;
- (ff) **"Sun Life Security"** means all Encumbrances (whether now existing or created in future) affecting any assets of any of the Companies (whether present or future) in favour of Sun Life (other than the Sun Life Subordinated Security), and for greater certainty includes any and all security interests created by the Sun Life Purchase Agreement in and to the Sun Life Assets and the Sun Life Related Equipment it being acknowledged that any Sun Life Assets and the Sun

Life Related Equipment have been or shall be assigned to Sun Life absolutely and do not and shall not comprise assets of any of the Companies;

- (gg) **"Sun Life Subordinated Debt"** means all indebtedness, obligations and liabilities relating to or in connection with or arising from the Sun Life Debenture and guaranteed by each of Capital and Leasing;
- (hh) **"Sun Life Subordinated Default Notice"** has the meaning given thereto in Section 9.2; and
- (ii) **"Sun Life Subordinated Security"** means all Encumbrances (whether now existing or created in future) affecting any assets of any of the Companies (whether present or future) in favour of Sun Life to secure the Sun Life Subordinated Debt (including, without limitation, the Sun Life Debenture), other than any such Encumbrances affecting the Sun Life Assets or the Sun Life Related Equipment.

1.2 The division of this Agreement into articles, sections and subsections and the insertion of headings exist only for convenience and shall not affect the construction or interpretation hereof.

1.3 Except as expressly provided herein, terms which are defined in the PPSA shall have the same meaning where used herein.

1.4 "This Agreement", "herein", "hereof", "hereby", "hereunder" and similar expressions mean and refer to this Agreement in its entirety and not to any particular article, section, subsection or other subdivision hereof.

1.5 Words importing the singular number only include the plural and vice versa and words importing gender shall include all genders and words importing persons include individuals, partnerships, corporations, trusts, unincorporated associations, joint ventures, governmental agencies and other entities.

1.6 Where pursuant to this Agreement a Creditor has priority over another Creditor in respect of certain assets, the first-mentioned Creditor may be referred to herein as the "Prior Creditor", the second-mentioned Creditor may be referred to herein as the "Subordinate Creditor" and the assets in question may be referred to herein as the "Particular Assets".

1.7 Any reference herein to an interest (including an ownership interest) of the Corporation in any property or assets includes any right, title or interest of the Corporation of any nature or kind in or relating to such property or assets, including without limitation rights under a lease, conditional sale agreement, title retention agreement or licence.

ARTICLE 2 CONSENT

2.1 Each Creditor hereby consents to the creation, issue, execution, delivery and registration of the Securities of the other Creditors and agrees that the creation, issue, registration, filing and existence of the same shall not constitute an event of default under the Securities of the first-mentioned Creditor.

2.2 Each of the Companies concurs in and agrees to the terms and provisions of this Agreement and shall maintain and deal with all its assets and undertaking in accordance with this Agreement.

ARTICLE 3 PRIORITIES

3.1 With respect to the Sun Life Assets and the Proceeds thereof each of the Creditors (other than Sun Life) hereby releases and forever discharges any security interest such Creditor may have in the Sun Life Assets, whether such Sun Life Assets are Sun Life Assets as of the date hereof or if such become Sun Life Assets at any time in the future in accordance with the provisions of the Sun Life Purchase Agreement. With respect to any and all amounts from time to time in the Reserve Fund (or successor thereto) established pursuant to the Sun Life Purchase Agreement each of the Creditors (other than Sun Life) hereby releases and forever discharges any security interest such Creditor may have in and to the same.

3.2 With respect to the Sun Life Related Equipment and the Proceeds thereof, the Securities shall rank in descending order of priority as follows:

- (a) first, the Sun Life Security, but only to the extent of the aggregate amount paid by Sun Life for the transfer (either absolutely or as security) of the Leases pursuant to the Sun Life Purchase Agreement, less any principal amounts received by Sun Life in respect of such leases;
- (b) second, the BMO Security; and
- (c) third, the Sun Life Subordinated Security.

3.3 With respect to the Industrial Assets and the Proceeds thereof, the Securities shall rank in descending order of priority as follows:

- (a) first, the Industrial Security;
- (b) second, the BMO Security; and
- (c) third, the Sun Life Subordinated Security.

3.4 With respect to the Other Property and the Proceeds thereof, the Securities shall rank in descending order of priority as follows:

- (a) first, the BMO Security; and
- (b) second, the Sun Life Subordinated Security.

ARTICLE 4 DEFAULT

4.1 BMO and each of the Companies hereby agree that the occurrence of any event which constitutes a Sun Life Default shall be a default under the BMO Debt and each of the agreements and documents relating to or in connection with the BMO Debt to which any of the Companies are a party and which include any events of default (including, without limitation, the Operating Loan Agreement and the FirstBank Fixed Rate Lending Agreement, each dated as of May 3, 2004 between BMO and Financial) are hereby amended to include as defaults therein all of the Sun Life Defaults.

4.2 Sun Life and each of the Companies hereby agree that the occurrence of any event which constitutes a BMO Default shall be a default under the Sun Life Subordinated Debt and each of the agreements and documents relating to or in connection with the Sun Life Subordinated Debt to which any of the Companies are and which include any events of default (including, without limitation, the Sun Life Debenture) are hereby amended to include as defaults therein all of the BMO Defaults.

ARTICLE 5 COSTS, ETC.

5.1 Where any priority provided by this Agreement is expressed to be limited to a stated principal amount, the priority shall, in addition to that amount, extend to and include interest accruing thereon at the rate or rates applicable thereto and reasonable costs of enforcement and collection in respect thereof (including legal fees) as allowed under such Creditor's Securities (but, in the case of the costs of enforcing the Securities, restricted to the portion thereof which properly relates to realization upon the assets in respect of which the priority is granted).

ARTICLE 6 ACCESS

6.1 The parties hereto shall permit each Creditor and its agents, employees and representatives access to view, at all reasonable times, any property or assets of the Companies and the right (at such Company's expense) to make copies of or extracts from any books of account and all records, ledgers, reports, documents and other writings relating to such property and assets.

ARTICLE 7 PROCEEDS AND RECEIPTS OF ASSETS

7.1 All Proceeds resulting from the enforcement of or realization on any of the Encumbrances constituted by the Securities will be divided or otherwise dealt with in such a way so as to give effect to the provisions of this Agreement and the priorities created or intended to be created and established hereby.

7.2 If a Subordinate Creditor receives or comes into possession of any Particular Assets (including Proceeds), the Subordinate Creditor shall hold the Particular Assets in trust for the Prior Creditor and shall forthwith deliver or pay the Particular Assets to the Prior Creditor.

7.3 The liability of the Companies (or any of them) for any claim in priority to the Securities (a "Prior Claim"), or the reduction of the Proceeds of any realization by reason of the imposition of any Prior Claim shall, regardless of the particular Company or assets upon which the liability or reduction has been imposed, be allocated to each asset of the Companies which is subject to such particular Prior Claim in proportion to the Proceeds thereof. The Creditors shall make adjustments amongst one another as necessary to give effect to the provisions of this Section 7.3. The Creditors consent to any receiver, agent or other like official appointed with respect to any of the Companies to remit to the proper authorities out of the Proceeds of the particular assets the amounts payable in respect of Prior Claims and deduct the same from distributions to the Creditors.

ARTICLE 8 INFORMATION DISCLOSURE

8.1 Each Creditor shall provide to the other Creditors from time to time upon request full information and particulars as to the amounts owing by any of the Companies, the performance by the Companies of their obligations to that Creditor and any other information which the party requesting the same deems material. The Companies consent to such disclosure.

ARTICLE 9 POSTPONEMENT AND STANDSTILL

9.1 Upon receipt of written notice from BMO to Sun Life and Financial of the occurrence of a Material Breach which is continuing and has not been waived by BMO and a description of such Material Default (a "Default Notice"), Financial shall not be permitted to pay, and Sun Life shall not be entitled to receive, cash payments in respect of regularly scheduled monthly payments of interest, fees or principal in respect of the Sun Life Subordinated Debt, until the earlier of (a) the passage of ninety (90) consecutive days from the date of receipt of the Default Notice by Sun Life and Financial, (b) the Material Default identified in the Default Notice has been waived by BMO or been cured or (c) the BMO Debt has been repaid in full and there is no further obligation on BMO to advance any further amounts to the Companies (the "Standstill Period"). If Sun Life receives, during the

Standstill Period, any payment, prepayment or other compensation in respect of the Sun Life Subordinated Debt contrary to the terms of this Agreement (including any proceeds or realization proceeds from the collateral which is subject to the Sun Life Subordinated Security), such payment, compensation or proceeds shall be forthwith forwarded by Sun Life to BMO. Upon expiry of the Standstill Period, payments to Sun Life pursuant to the Sun Life Subordinated Debt may resume. BMO and Sun Life acknowledge that BMO may not issue a subsequent Default Notice unless the Material Default identified in the previous Default Notice has been cured. BMO shall issue no more than one Default Notice during any twelve month period and no more than three Default Notices during the term of the Sun Life Subordinated Debt.

9.2 Sun Life hereby covenants and agrees that it shall not exercise any remedies pursuant to the Sun Life Subordinated Security, unless and until:

- (a) BMO has taken steps to enforce the BMO Security and Sun Life may then take the same steps as BMO, subject always to the priorities set out herein; or
- (b) Sun Life has given notice to BMO and to Financial of the occurrence of an event which constitutes an event of default pursuant to the Sun Life Subordinated Debt or the Sun Life Subordinated Security (including as amended pursuant to Section 4.2 hereof) (the "Sun Life Subordinated Default Notice") and a period of ninety (90) days from the date the Sun Life Subordinated Default Notice was sent to BMO has expired; or
- (c) the BMO Debt has been repaid in full and there is no further obligation on BMO to advance any further amounts to the Companies.

Nothing in this Section 9.2 shall prevent Sun Life from giving notice to BMO or Financial of a default or event of default or accelerating any indebtedness owing to Sun Life pursuant to the Sun Life Subordinated Debt or of its intention to realize on the Sun Life Subordinated Security.

9.3 Nothing contained in this Article 9 shall in any way affect the ability of Sun Life to exercise its rights in connection with, relating to or arising from the Sun Life Purchase Agreement or the Sun Life Security or in connection with the Sun Life Assets or the Sun Life Related Equipment.

ARTICLE 10 REALIZATION

10.1 Each of the Creditors agree that they will use their best efforts to give prompt written notice to each of the other Creditors of any action taken by them against any of the Companies to enforce their security, and will provide a copy of any notice or demand provided to any Company to each of the other Creditors. Such notice may be given prior to or forthwith after taking such action, but failure to give such notice will not give the other Creditors any cause of action or right to damages or other remedy against such Creditor.

10.2 No Creditor shall be required to realize against any assets of any of the Companies under its Securities for the benefit of any other Creditor. Where a Subordinate Creditor has commenced realization upon the Particular Assets, the Prior Creditor may at any time take over such realization upon notice to the Subordinate Creditor of its intention to take over the realization process against such Particular Assets. Subsequent to the Prior Creditor taking over such realization, the Subordinate Creditor shall not take any steps relating to realization of the Particular Assets provided the Prior Creditor diligently pursues such realization.

ARTICLE 11 AMENDMENT

11.1 Nothing contained in this Agreement, or in any other agreement or instrument binding upon any of the parties hereto, shall in any manner limit or restrict the ability of BMO from increasing or changing the terms of the BMO Debt, or to otherwise waive, amend or modify the terms and conditions of the BMO Debt, in such manner as BMO and the Companies shall mutually determine. Sun Life hereby consents to any and all such waivers, amendments, modifications and compromises, and any other renewals, extensions, indulgences, releases or discharges of Encumbrances or other accommodations granted by BMO to the Companies from time to time, and agrees that none of such actions shall in any manner affect or impair the subordination established by this Agreement in respect of the Sun Life Subordinated Debt. Notwithstanding the foregoing, neither BMO nor any Company shall enter into any amendment to or modification of the BMO Debt, without the prior written consent of Sun Life, the effect of which would (a) increase the aggregate principal amount of the BMO Debt to an amount greater than the Maximum BMO Principal Amount, (b) add additional events of default or make the terms of any existing event of default materially more restrictive to any Company than as set out on the date hereof and/or (c) add restrictions on the ability of any Company to make payments permitted pursuant to the provisions hereof.

11.2 Nothing contained in this Agreement, or in any other agreement or instrument binding upon any of the parties hereto, shall in any manner limit or restrict the ability of Sun Life from increasing or changing the terms of the Sun Life Subordinated Debt, or to otherwise waive, amend or modify the terms and conditions of the Sun Life Subordinated Debt, in such manner as Sun Life and the Companies shall mutually determine. BMO hereby consents to any and all such waivers, amendments, modifications and compromises, and any other renewals, extensions, indulgences, releases or discharges of Encumbrances or other accommodations granted by Sun Life to the Companies from time to time. Notwithstanding the foregoing, neither Sun Life nor any Company shall enter into any amendment to or modification of the Sun Life Subordinated Debt, without the prior written consent of BMO, the effect of which would (a) increase the aggregate principal amount of the Sun Life Subordinated Debt to an amount greater than the Maximum Sun Life Principal Amount, (b) add additional events of default or make the terms of any existing event of default materially more restrictive to any Company than as set out on the date hereof and/or (c) increase the amount or frequency of any payments of principal pursuant to the Sun Life Subordinated Debt.

ARTICLE 12 GENERAL

12.1 This Agreement shall as between the Creditors evidence and govern the priorities of the Securities in all respects and regardless of the priorities otherwise accorded to the Securities by any principle of law or any statute, including the PPSA, and in particular, without regard to the time of:

- (a) creation, grant, execution or delivery of the Securities;
- (b) attachment or perfection of the Encumbrances under the Securities;
- (c) registration of or in respect of the Securities or the filing of financing statements or other instruments and documents with respect thereto;
- (d) default in respect of, or crystallization of any Encumbrance under, the Securities;
- (e) any notice to or demand upon any of the Companies or to any other person (or the failure to give any notice or demand); or
- (f) any advance or advances of money or money's worth made to any of the Companies.

12.2 Each Creditor hereby postpones and subordinates for the benefit of the other Creditors the Encumbrances under the Securities, to the extent necessary to give effect to the priorities herein established.

12.3 The parties hereto shall, from time to time and at all times hereafter, upon every reasonable request of any of the Creditors and at the expense of the Companies, make or do such further acts and things and execute, deliver, register and file such further deeds, documents and assurances including, without limitation, any further or specific postponements desired under any applicable laws or otherwise, as may be necessary in the opinion of such Creditor for more effectively implementing and carrying out the true intent and purpose of this Agreement.

12.4 No provision of this Agreement shall be construed as obligating any Creditor to advance any monies or otherwise extend credit to any of the Companies at any time.

12.5 Nothing contained in this Agreement is intended to or shall impair the obligations of any of the Companies to pay its indebtedness to the Creditors, including the principal thereof and the interest and premium, if any, thereon as and when the same shall become due and payable in accordance with the terms applicable thereto nor shall anything in this Agreement limit or in any way restrict or prevent any Creditor from demanding payment in full of the indebtedness of any of the Companies to it or otherwise to accelerate the payment thereof.

12.6 To the extent any of the Securities shall be unenforceable against creditors of any of the Companies generally, the Creditor holding such security shall not be entitled to claim the benefit of this Agreement in respect thereof. None of the parties hereto shall take any steps or do any act or thing whereby the priorities provided for herein may be defeated or impaired.

12.7 If any third party shall have a valid claim to the Proceeds of any of the property or assets of any of the Companies in priority to or on a parity with one of the Creditors but not in priority to or on a parity with another Creditor, then this Agreement shall not apply so as to diminish the rights (as such rights would have been but for the provisions of this Agreement) of such other Creditor against any such third party to the proceeds of disposition of such property or assets.

12.8 The indebtedness of the Companies to each of the Creditors is several and nothing herein contained shall be construed as creating between the Creditors a partnership, joint venture or other joint association.

12.9 Any notice or written communication given pursuant to or in connection with this Agreement shall be in writing and shall be given by delivering the same personally or by prepaid courier, prepaid registered mail, telex or telecopier, addressed to the party to be notified at the address of such party set out herein or at such other address of which such party has given notice to the other parties hereto. Any such notice shall be conclusively deemed to have been given and received on the day of actual receipt by the addressee or, if given by prepaid registered mail, on the third Business Day following the mailing date (absent a general disruption in postal service).

12.10 Amounts of currency expressed herein are in lawful money of Canada.

12.11 This Agreement supersedes all prior agreements and understandings relating to the subject matter hereof between any of the parties hereto and represents the entire transaction between the parties with respect thereto. Except as expressly set out herein, there are no representations, warranties or conditions, written or oral, express or implied, statutory or otherwise, concerning the subject matter hereof. No party hereto has relied on any express or implied representation, written or oral, of any person as an inducement to enter into this Agreement. In particular, the parties acknowledge that the agreement dated as of May 3, 2004 among the parties hereto (or in the case of Industrial, its predecessor) is no longer of any force or effect.

12.12 Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated except by instrument in writing, signed by the parties or by the party against whom enforcement of the change, waiver, discharge or termination is sought. No consent of any of the Companies shall be necessary to any amendment to the terms hereof by the Creditors unless the interests of such Company are directly affected thereby; provided that, following any amendment, the Creditors shall notify the Companies of the same.

12.13 No act or omission by any party hereto in any manner whatever in the premises shall extend to or be taken to affect any provision hereof or any subsequent breach or default or the rights resulting therefrom save only express waiver in writing.

12.14 Nothing contained in this Agreement shall be construed as conferring any rights or benefits of any kind whatsoever upon any of the Companies, or any person who is not a party to this Agreement, or as modifying any other agreement between the Creditors or any of them and any of the Companies, and each of the Companies shall not be entitled to enforce any provision of this Agreement.

12.15 Time shall be in all respects of the essence hereof.

12.16 Any provision of this Agreement which is invalid or unenforceable under the laws of any jurisdiction in which this Agreement is sought to be enforced shall, as to such jurisdiction and to the extent such provision is invalid or unenforceable, be deemed severable and shall not affect any other provision of this Agreement.

12.17 This Agreement shall be construed, interpreted and performed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall in all respects be treated as an Ontario contract.

12.18 This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and all of such counterparts taken together shall be deemed to constitute one and the same agreement.

12.19 This Agreement shall enure and accrue to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns and every reference herein to a party hereto shall extend to such successors and assigns as if specifically named therein; provided that a Creditor (the "Assignor") assigning or transferring any of the Securities shall first deliver to the other Creditor(s) a written agreement by the proposed assignee or transferee in favour of the other Creditor(s) to be bound by the provisions hereof to the same extent as the Assignor.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

BANK OF MONTREAL

By: 
 Name: **W. H. SAMETZ**
 Title: **RELATIONSHIP MANAGER**

By: _____
 Name: _____
 Title: _____

SUN LIFE ASSURANCE COMPANY OF CANADA

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

BANK OF MONTREAL

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

**SUN LIFE ASSURANCE COMPANY OF
 CANADA**



By: [Signature]
 Name: Keith Cressman, Assistant Vice-President
 Title: Structured Finance

By: [Signature]
 Name: _____
 Title: A. (Moe) Danis, Assistant Vice-President
 Lease Finance

**INDUSTRIAL ALLIANCE INSURANCE
 AND FINANCIAL SERVICES INC.**

By: _____
 Name: _____
 Title: _____

By: _____
 Name: _____
 Title: _____

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

BANK OF MONTREAL

By: _____
Name: _____
Title: _____


By: _____
Name: _____
Title: _____


**SUN LIFE ASSURANCE COMPANY OF
CANADA**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**INDUSTRIAL ALLIANCE INSURANCE
AND FINANCIAL SERVICES INC.**

By: 
Name: Rene E. Trudeau
Title: Executive Vice President and
Chief Operating Officer

By: 
Name: _____
Title: **GARY COLES**
Senior Vice-President, Administration

BODKIN FINANCIAL CORPORATION

Per: 

Name: _____

Title: _____

I have authority to bind the Corporation

BODKIN LEASING CORPORATION

Per: 

Name: _____

Title: _____

I have authority to bind the Corporation

BODKIN CAPITAL CORPORATION

Per: 

Name: _____

Title: _____

I have authority to bind the Corporation

SCHEDULE A
BMO DEFAULT

1. Failure of any of the Companies to make any payment of any amounts outstanding to BMO pursuant to the BMO Debt or the BMO Security.
2. The ratio of Financial's combined Total Debt to Tangible Net Worth exceeds 7.5:1.0.
3. Tangible Net Worth of Financial is less than 100% of the outstanding securitization proceeds receivable.
4. The ratio of Financial's combined Earnings Before Interest and Taxes to combined Interest Expense is less than 1.75:1.0.

WHERE

"Tangible Net Worth" means the recorded consolidated financial statement value of shareholder's equity in the business plus any loan made by the shareholders to the business and formally subrogated in favour of BMO, on terms acceptable to BMO minus the following, if not already provided for or deducted: allowance for such intangible assets as leasehold improvements, goodwill, franchises, patent right, copyrights and trademarks; reserve amounts for credit losses, amounts due by officers, subsidiaries and/or affiliates, and provision for income tax deemed reasonably by BMO.

In addition to the foregoing, in connection with No. 2 above an amount equal to the greater of (i) the trailing 12 month average loss rate, or (ii) 1% times 1.25 times the outstanding securitized lease assets, is to be deducted from Tangible Net Worth.

"Total Debt" is to exclude deferred revenues and deferred taxes and is to include \$3,000,000 provided to the borrower from Sun Life by way of subordinated debenture.

SCHEDULE B
SUN LIFE DEFAULT

1. Failure of any of the Companies to make any payment of any amounts outstanding to Sun Life pursuant to the Sun Life Subordinated Debt or the Sun Life Subordinated Security.
2. Failure to maintain Tangible Net Worth of not less than \$3,000,000.
3. Failure to maintain a ratio of Total Funded Debt to Tangible Net Worth of not more than 7.50 to 1.00.
4. Failure to maintain a ratio of EBIT to Interest Expense of not less than 1.75 to 1.00.

WHERE:

"Tangible Net Worth" means, at any time,

- (i) the sum of (i) the value stated on the books of Financial of the share capital of Financial and its Subsidiaries plus (ii) the amount of the paid in capital and retained earnings of Financial and its Subsidiaries plus (iii) the principal amount outstanding under the Sun Life Subordinated Debt, minus
- (ii) the net book value of all assets, after deducting any reserves applicable thereto, which would be treated as intangibles under GAAP, including, without limitation, goodwill, trademarks, tradenames, service marks, brand names, copyrights and patents and prototype development costs and the excess of the equity in any Subsidiary over the cost of the investment in such Subsidiary, minus
- (iii) all deferred assets (other than prepaid taxes and other expenses), minus
- (iv) the book value of any asset which is an investment in or is owed to any of the Companies by a non-arm's length party within the meaning of the *Income Tax Act (Canada)*,

in each case as such amounts would be shown on a consolidated balance sheet of Financial and its Subsidiaries as of such time prepared in accordance with GAAP.

"Total Funded Debt" means, on any particular date, all interest bearing Debt of Financial on a consolidated basis as at such particular date determined in accordance with GAAP including the BMO Debt and the principal amount

outstanding under the Sun Life Subordinated Debt but excluding any trade payables arising in the normal course of business, deferred revenue, deferred taxes and accrued liabilities.

"Debt" of any Person means, without duplication:

- (v) all indebtedness of such Person for or in respect of borrowed money, credit or other financial accommodation, including liabilities and obligations with respect to letters of credit, letters of guarantee, bankers' acceptances or similar instruments issued or accepted by banks and other financial institutions for the account of such Person;
- (vi) all indebtedness of such Person for or in respect of the purchase or acquisition price of property or services, whether or not recourse is limited to the repossession and sale of any such property;
- (vii) all obligations under any lease entered into by such Person as lessee which would be classified as a capital lease in accordance with GAAP;
- (viii) all obligations of such Person to purchase, redeem, retract or otherwise acquire any securities issued by such Person; and
- (ix) all Debt (as hereinbefore defined) or any other debt which is directly or indirectly guaranteed by such Person or which such Person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which such Person has otherwise assured a creditor against loss;

provided, however, that indebtedness incurred by Financial or its Subsidiaries on account of the supply of goods and services in the ordinary course of business shall be excluded from the calculation of Debt of Financial or its Subsidiaries so long as such indebtedness is paid or otherwise satisfied within customary credit terms normally established from time to time by Financial with its suppliers.

"EBIT" of Financial for a particular period of Financial means the income (or loss) of Financial and its Subsidiaries, determined on a consolidated basis, before deductions of interest and taxes and before any payments on account of capital or financial leasing for such period, determined in accordance with GAAP, but without taking into account:

- (i) extraordinary items of income or expense; or
- (ii) prior period adjustments.

"Interest Expense" means, at anytime, interest payments which Financial was required to make during the prior twelve (12) month period.

ASSUMPTION AGREEMENT

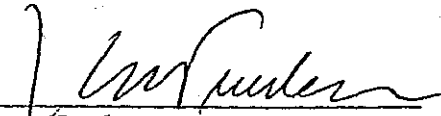
IT IS HEREBY CERTIFIED THAT, pursuant to agreements dated April 19, 2005, and August 22, 2005, between Industrial Alliance Insurance and Financial Services Inc. ("Industrial") and The National Life Assurance Company of Canada ("National"), National assigned to Industrial with effect from July 1, 2005, all of the assets and liabilities of National with respect to the Priority Agreement dated May 3, 2004, between Bank of Montreal, Sun Life Assurance Company of Canada, Bodkin Financial Corporation, Bodkin Leasing Corporation, Bodkin Capital Corporation and National, and Industrial has agreed to be bound by the provisions of the said Agreement to the same extent as National.

Please sign and return to us a copy of this Assumption Agreement to indicate your agreement to the substitution of the name Industrial for that of National as a party to the said Agreement.

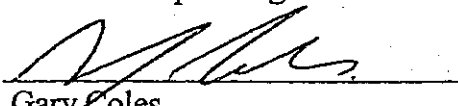
Signed at the Industrial Alliance Toronto Service Centre, 522 University Avenue, Toronto, Ontario this 5th day of October, 2005.

**Industrial Alliance Insurance
and Financial Services Inc.**

Per: _____


Rene Trudeau
Executive Vice President
and Chief Operating Officer

Per: _____


Gary Coles
Senior Vice President,
Administration

Accepted this 21st day of October, 2005.

Bank of Montreal

Per: _____


W. H. SAMETZ
RELATIONSHIP MANAGER

Per: _____

TAB J

**THIS IS EXHIBIT "J" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "Sam Rappos", is written over a horizontal line.

SAM PHILIP RAPPOS

A COMMISSIONER FOR TAKING AFFIDAVITS

TERM SHEET**BORROWER****Bodkin Financial Corporation****FACILITY 1****OPERATING CREDIT****Amount****\$13,000,000****Purpose**

To assist with daily business operations.

Availment

On demand by way of overdraft &/or Foreign Exchange Forward Contracts (FEFC) (10% risk content) as per terms and conditions under Operating Loan Agreement. FEFC availability is capped at \$500,000 (CAD), with one year maximum term. Availment for equipment is to be capped at \$6,500,000 at any one point in time.

Margin Requirements

Advances, including FEFC risk content, are to be contained at all times within the aggregate of the undernoted company assets, which are to be free and clear of any other encumbrances:

- (a) 100% of new and used vehicles (including medium duty trucks and heavy duty trucks and trailers) and equipment pending funding of the respective lease by a third party and ultimate securitization. To be outstanding under this line for no longer than 90 days.
- (b) 70% of the acquisition cost of used vehicles up to 90 days, with no value given to units over 90 days. Maximum availability \$750,000.
- (c) 75% of the Bank's estimated worth of good quality customer accounts receivable less than or equal to 3 months past due, Excluding items in dispute, amounts due by Officers and Affiliates and intercompany accounts.

Repayment

From advances under Facility 2, equipment securitization, and normal business receipts.

Interest Rate

Bank of Montreal Prime + **1.75%**, floating, payable monthly in arrears.

FCMA Fee

\$500.00 per month.

Administration Fee

In addition to the FCMA Fee, a monthly administration fee of \$500 is to apply.

FACILITY 2**WHOLESALE LEASING CREDIT****Amount****\$ 10,000,000****Purpose**

To finance the leasing of new and used vehicle leases. To include leases for company vehicles up to a maximum of 30 units.

Loan Limits**NEW VEHICLES**

The Bank will finance **100%** of the acquisition cost (including any value added package) of new vehicles (excluding GST) less advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

USED VEHICLES

The Bank will finance the lesser of: (i) **100%** of the acquisition cost (including any value added package), plus \$600 administration cost, of used vehicles (excluding GST), less advance rentals, cash downpayments and trade-in allowances or (ii) current Black Book "clean value", plus \$600 administration cost, less advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice" Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****NEW and USED VEHICLES****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 1.75% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal Prime + 1.5%, floating, payable monthly in arrears
&/or

(B) Canadian Dollar Offering Rate (CDOR) + 300 basis points.

To be set at the beginning of the month and remain in place for one month.

(CDOR rate is based upon the average of Schedule 1 Banks one month Bankers Acceptance offering rates as at 10 am Toronto time on the last business day of the month)

USED VEHICLES

Total advances for used vehicle financing not to exceed 50% of the amount drawn under the Wholesale Leasing Credit.

Terms

Lease terms are available as follows:

New vehicles: -up to 60 months.

Vehicles that are one model year old, with under 30,000 kilometres, are to be considered new up to June 30th of the current year.

Used vehicles:

- Term of the lease plus model age of vehicle up to 84 months.
- Current & up to three model years old
- Model year is deemed to be the same as the calendar year

Extensions:

Available for units originally leased as new provided the original lease term plus extension does not exceed 72 months and amount financed cannot exceed the Bank Balloon Balance. Upon notification from the Borrower (and prior to lease maturity), leases may be extended for a maximum of 3 months without further documentation.

Re-Leases:

In the event of a lease default, and the borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the vehicle to another lessee, creating a new lease; the amount is not to exceed the outstanding loan balance less any additional advance rentals, cash down payments and trade-in allowances.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases. Closed end leases will only be financed upon evidence of satisfactory residual value insurance.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Repayment

- From monthly lease revenue and/or sale of off-lease vehicles.
- Loans must be fully paid out **within 30 days** of lease termination or when vehicle sold, whichever occurs first, unless extended for 3 months as provided for above.
- Loans must be fully paid out on vehicles reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; **payout to be the earlier of receipt of insurance proceeds or 60 days.**
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(I) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN END LEASES		CLOSED END LEASES	
Terms (Mos.)	Payback	Terms (Mos.)	Payback
1 to 23	2.00% princ.	1 to 23	2.25% princ.
24 to 35	1.75% princ.	24 to 35	2.00% princ.
36 to 60	1.50% princ.	36 to 60	1.50% princ.

Note: A reduction of .25% will be made to the above payback factors for the following makes: Toyota, Lexus, Nissan, Infiniti, Acura, Honda, Mercedes Benz, BMW, Porsche.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades as a % of Vehicle Cost	5% - 9%	10% - 14%	Over 14%
TERM (Months) Open &/or Closed End			
1 - 23	2.00%	1.75%	1.50%
24 - 35	1.75%	1.50%	1.25%
36 - 60	1.50%	1.25%	1.00%

In no case will the balloon balance exceed the projected residual value of the vehicle at lease termination.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance is applicable to any prepaid amounts on fixed rate leases, except in the following exceptional circumstances:

- i. the related lease is terminated by mutual consent of the Lessor and the Lessee,
- ii. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- iii. the financed vehicle is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- iv. the financed vehicle has been used in daily rental service for at least twelve months, or
- v. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection**(fixed rate advances only)**

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- **Application in writing is required from lessor prior to the next weekly rate change.**
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of rate change.

The interest rate on the 3 month lease extensions (as provided for above) will be the loan rate of the original lease, otherwise the interest rate on all other lease extensions will be the current rate.

Interest rate on a re-lease must be current rate. However in the case of a lease default, "New" terms may apply if the vehicle has less than 30,000 Kms, otherwise "Used" terms will apply.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).

Note:

Lessor's lease file should contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

- Proof of ownership (copy of vehicle registration).
- Delivery Receipt
- Copy of evidence of lessee coverage for fire, theft and comprehensive in an amount no less than the actual cash value. Public liability, property damage and bodily injury of not less than \$1,000,000.
- Collision or comprehensive deductible not to exceed \$5,000.

General Conditions - Applicable to Facility # 2

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting of vehicles by the lessee is permitted.
3. No broker lease financing paper is permitted. All leases to be in the name of BFC Group companies, as lessor.
4. Lease advances outside of the Province of Ontario will not exceed 40% of outstanding lease advances under the Wholesale Leasing Credit. Leases outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 10 leases in any one company or individual without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification if conducted by Borrower's auditor shall be for the account of the Borrower.

Audits

Subject to surprise audits, not less frequently than quarterly.

FACILITY 3**HEAVY DUTY TRUCK AND TRAILER LEASING CREDIT****Amount****\$ 6,000,000****Purpose**

To finance the leasing of new and used heavy duty trucks and trailers (Individually and collectively herein described as "unit"). Advances related to used trucks including re-leases, but excluding extensions and assumptions on trucks (which were originally leased as new trucks), are not to **exceed \$1,500,000** (25% of the Facility 3 limit). All trucks are to be standard on-road vehicles.

Loan Limits**NEW UNITS**

The Bank will finance **100%** of the acquisition cost (including any value added package) of new units (excluding GST) **less** advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

USED UNITS

The Bank will finance **100%** of the acquisition cost (including any value added package), plus \$600 administration cost, of used units (excluding GST), **less** advance rentals, cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****NEW and USED UNITS****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 2.25% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal **Prime + 2.0%**, floating, payable monthly in arrears
&/or

(C) Canadian Dollar Offering Rate (**CDOR**) + **350** basis points.

To be set at the beginning of the month and remain in place for one month.

Terms

Lease terms are available as follows:

New Units: -up to 60 months.

Units that are one model year old, with under 30,000 kilometres, are to be considered new up to June 30th of the current year.

Used units:

- Term of the lease plus model age of unit up to 84 months.
- Current & up to three model years old
- Model year is deemed to be the same as the calendar year

Extensions:

Available for units originally leased as new provided the original lease term plus extension does not exceed 72 months and amount financed cannot exceed the Bank Balloon Balance. Upon notification from the Borrower (and prior to lease

maturity), leases may be extended for a maximum of 3 months without further documentation.

Re-Leases:

In the event of a lease default, and the borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the unit to another lessee, creating a new lease; the amount is not to exceed the outstanding loan balance less any additional advance rentals, cash down payments and trade-in allowances.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases. Closed end leases will only be financed upon evidence of satisfactory residual value insurance.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Repayment

- From monthly lease revenue and/or sale of off-lease vehicles.
- Loans must be fully paid out **within 30 days** of lease termination or when unit sold, whichever occurs first, unless extended for 3 months as provided for above.
- Loans must be fully paid out on units reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; **payout to be the earlier of receipt of insurance proceeds or 60 days.**
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(i) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN AND CLOSED END LEASES	
Terms (Mos.)	Payback
1 to 23	2.50% princ.
24 to 35	2.25% princ.
36 to 48	2.00% princ.
49 to 60	1.75% princ.

In no case will the balloon balance exceed the projected residual value of the unit at lease termination.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades As a % of Vehicle Cost	0% - 9%	Over 10%
TERM (Months) Open &/or Closed End		
1 - 23	2.50%	2.25%
24 - 35	2.25%	2.00%
36 - 48	2.00%	1.88%
49 - 60	1.75%	1.75%

In no case will the balloon balance exceed the projected residual value of the vehicle at lease termination.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance is applicable to any prepaid amounts on fixed rate leases, except in the following exceptional circumstances:

- i. the related lease is terminated by mutual consent of the Lessor and the Lessee,
- ii. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- iii. the financed unit is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- iv. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection**(fixed rate advances only)**

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- **Application in writing is required from lessor prior to the next weekly rate change.**
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of rate change.

The interest rate on the 3 month lease extensions (as provided for above) will be the loan rate of the original lease, otherwise the interest rate on all other lease extensions will be the current rate.

Interest rate on a re-lease must be current rate. However in the case of a lease default, "New" terms may apply if the vehicle has less than 30,000 Kms, otherwise "Used" terms will apply.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).
- Minimum summary tax return information for sole proprietorships and financial statement for corporations for lease transactions of \$50,000 or more.

Note:

Lessor's lease file should contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

- Proof of ownership (copy of truck registration).
- Delivery Receipt
- Copy of evidence of lessee coverage for fire, theft and comprehensive in an amount no less than the actual cash value. Public liability, property damage and bodily injury of not less than \$2,000,000 for trucks and \$1,000,000 for trailers.
- Collision or comprehensive deductible not to exceed 10% of the capital cost of the unit, capped at \$25,000.

General Conditions - Applicable to Facility # 3

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting of vehicles by the lessee is permitted.
3. No broker lease financing paper is permitted. All leases to be in the name of BFC Group companies, as lessor.
4. Leases outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 3 leases in any one company or individual without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification if conducted by Borrower's auditor shall be for the account of the Borrower.

Audits

Subject to surprise audits, not less frequently than quarterly.

Fees

The Borrower will be responsible for payment of the following fees:

- All costs including legal fees and out of pocket expenses incurred for the preparing and obtaining of security and documentation.
- \$25.00 administration fee per lease booked, plus out of pocket expenses are to be recovered from the lessor. e.g. bank reports \$12.
- \$25.00 administration fee per lease booked with rate protection is to be recovered from the lessor.
- \$1,000.00 per annum to cover the cost of lease portfolio audits.
- Reporting fees as a result of deviations from the terms and conditions set out herein. e.g.
\$100 for each Exception Request (first 4 exception requests per annum, no charge)
\$500 for Interim Credit Applications

FACILITY 4**NEW EQUIPMENT LEASING CREDIT****Amount****\$ 3,000,000****Purpose**

To finance the leasing of new equipment in the following categories:

1. New manufacturing and processing equipment
2. New packaging and materials handling equipment
3. New wood and metal working equipment
4. New construction equipment and
5. New agricultural equipment

Loan Limits**NEW UNITS**

The Bank will finance **100%** of the acquisition cost of new equipment (excluding GST) **less** cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 2.25% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal **Prime + 2.0%**, floating, payable monthly in arrears
&/or

(D) Canadian Dollar Offering Rate (**CDOR**) + **350** basis points.

To be set at the beginning of the month and remain in place for one month.

Terms

Lease terms are available up to 60 months.

Re-Leases:

In the event of a lease default, and the borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the unit to another lessee, creating a new lease; the amount is not to exceed the outstanding loan balance less cash down payments.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases. Closed end leases will only be financed upon evidence of satisfactory residual value insurance.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Limitation

Leases removed from a securitization are not eligible for financing under this facility.

Repayment

- From monthly lease revenue and/or sale of equipment.
- Loans must be fully paid out **within 30 days** of lease termination or when unit sold, whichever occurs first.
- Loans must be fully paid out on units reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; **payout to be the earlier of receipt of insurance proceeds or 60 days.**
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(i) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN AND CLOSED END LEASES	
Terms (Mos.)	Payback
1 to 23	2.50% princ.
24 to 35	2.25% princ.
36 to 48	2.00% princ.
49 to 60	1.75% princ.

In no case will the balloon balance exceed the projected residual value of the unit at lease termination.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades as a % of Vehicle Cost	0% - 9%	Over 10%
TERM (Months) Open &/or Closed End		
1 - 23	2.50%	2.25%
24 - 35	2.25%	2.00%
36 - 48	2.00%	1.88%
49 - 60	1.75%	1.75%

In no case will the balloon balance exceed the projected residual value of the unit at lease termination.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance is applicable to any prepaid amounts on fixed rate leases, except in the following exceptional circumstances:

- v. the related lease is terminated by mutual consent of the Lessor and the Lessee,
- vi. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- vii. the financed unit is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- viii. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection**(fixed rate advances only)**

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- **Application in writing is required from lessor prior to the next weekly rate change.**
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of rate change.

Interest rate on a re-lease must be current rate.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).
- Minimum summary tax return information for sole proprietorships and financial statement for corporations for lease transactions of \$50,000 or more.
- Proof of comprehensive insurance coverage

Note:

Lessor's lease file should contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

General Conditions - Applicable to Facility # 4

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting.
3. No broker lease financing paper is permitted. All leases to be in the name of BFC Group companies, as lessor.
4. Leases outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 3 leases in any one company or individual without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification if conducted by Borrower's auditor shall be for the account of the Borrower.

Audits

Subject to surprise audits, not less frequently than quarterly.

Fees

The Borrower will be responsible for payment of the following fees:

- All costs including legal fees and out of pocket expenses incurred for the preparing and obtaining of security and documentation.
- \$25.00 administration fee per lease booked, plus out of pocket expenses are to be recovered from the lessor. e.g. bank reports \$12.
- \$25.00 administration fee per lease booked with rate protection is to be recovered from the lessor.

FACILITY 5**GOVERNMENTAL NEW EQUIPMENT LEASING CREDIT****Amount****\$ 3,000,000****Purpose**

To finance the leasing of equipment:

Loan Limits**NEW UNITS**

The Bank will finance **100%** of the acquisition cost of new equipment to governmental (federal, provincial or municipal) agencies (excluding GST) less cash downpayments and trade-in allowances. Acquisition cost to be verified via "arms-length invoice". Financing of leases under this facility must be completed within 60 days of origination.

Interest Rates**(FIXED)****Up to and including 60 month term:**

Bank of Montreal Cost of Funds + 2.25% fixed for term chosen (1 to 5 years).

(FLOATING)

(A) Bank of Montreal **Prime + 2.0%**, floating, payable monthly in arrears
&/or

(E) Canadian Dollar Offering Rate (**CDOR**) + **350** basis points.

To be set at the beginning of the month and remain in place for one month.

Terms

Lease terms are available up to 60 months.

Re-Leases:

In the event of a lease default, and the borrower is unable to find a lessee to assume the existing lease, and has had to re-lease the unit to another lessee, creating a new lease; the amount is not to exceed the outstanding loan balance less cash down payments.

Assumptions:

New Lessee must assume all terms of the original lease

Types of Leases

Restricted to open end leases. Closed end leases will only be financed upon evidence of satisfactory residual value insurance.

Lessor is responsible to register their interest under P.P.S.A. for ALL leases.

Limitation

Leases removed from a securitization are not eligible for financing under this facility.

Repayment

- From monthly lease revenue and/or sale of equipment.
- Loans must be fully paid out **within 30 days** of lease termination or when unit sold, whichever occurs first.
- Loans must be fully paid out on units reported as a total loss resulting from accident, theft or loss regardless if settlement is to be paid by insurance company; **payout to be the earlier of receipt of insurance proceeds or 60 days.**
- When arrears under the lease contract are more than 60 days delinquent, the lessor must take immediate corrective action (e.g. lessee to bring arrears current or steps taken to repossess the unit).

Standard monthly repayment schedule as undernoted:

(i) To be repaid monthly for the term of lease on a fixed principal payment at:

OPEN AND CLOSED END LEASES	
Terms (Mos.)	Payback
1 to 23	2.50% princ.
24 to 35	2.25% princ.
36 to 48	2.00% princ.
49 to 60	1.75% princ.

In no case will the balloon balance exceed the projected residual value of the unit at lease termination.

(ii) Fixed Principal Repayments if Down Payments Are Made:

Down Payment/Trades as a % of Vehicle Cost	0% - 9%	Over 10%
TERM (Months) Open &/or Closed End		
1 - 23	2.50%	2.25%
24 - 35	2.25%	2.00%
36 - 48	2.00%	1.88%
49 - 60	1.75%	1.75%

In no case will the balloon balance exceed the projected residual value of the unit at lease termination.

Prepayment

A prepayment penalty of three percent (3%) of the then outstanding principal balance is applicable to any prepaid amounts on fixed rate leases, except in the following exceptional circumstances:

- ix. the related lease is terminated by mutual consent of the Lessor and the Lessee,
- x. the amount prepaid is equal to an amount prepaid by the Lessee to the Lessor to fully prepay the related lease,
- xi. the financed unit is destroyed or in the opinion of the Bank, is rendered unsuitable for further leasing,
- xii. the prepayment is made pursuant to the Lessee's default.

Floating Rate

If the floating rate option is selected there will be a one-time opportunity to convert all or a portion of the portfolio to a fixed rate at the current fixed rate at the time of the change. Once the fixed rate option is chosen, the portfolio or portion thereof so converted cannot revert to a floating rate basis.

Rate Protection

(fixed rate advances only)

Interest rates for lease financing may fluctuate between ordering time and delivery date of vehicle. Rate protection is available in such instances to the Lessor. Requirements are:

- **Application in writing is required from lessor prior to the next weekly rate change.**
- Details of units and name of lessee and delivery date must be provided via copy of Offer to Lease / or equivalent documentation acceptable to the Bank.
- Maximum protection is 60 days from date of rate change.

Interest rate on a re-lease must be current rate.

Interest

Payable monthly in arrears.

Availment

By Lessor's Proceeds Request (Bank Form 3840) with individual lease documentation as follows:

- Lease Agreement that is acceptable and assignable to the Bank (signed in original).
- Dealer/vendor invoice or bill of sale (copy).
- Results of credit investigation on Lessee (Bank Form 3800 to be provided).
- Minimum summary tax return information for sole proprietorships and financial statement for corporations for lease transactions of \$50,000 or more.
- Proof of comprehensive insurance coverage

Note:

Lessor's lease file should contain a credit application signed by the lessee authorizing a credit investigation and exchange of credit information.

General Conditions - Applicable to Facility # 5

1. The Bank reserves the right to decline financing of any lease contract where, in its opinion, the risk is not acceptable.
2. No subletting.
3. No broker lease financing paper is permitted. All leases to be in the name of BFC Group companies, as lessor.
4. Leases outside of Canada are ineligible for financing.
5. Under this Facility, the Bank will not finance more than 5 leases to any one entity without the prior approval of the Bank.
6. For audit purposes, the Bank shall have the right to verify leases directly with lessees. The verification of leases shall either be completed directly by the Bank or, at the option of the Borrower, the verification of leases may be completed by the Borrower's auditor so long as the auditor is

satisfactory to the Bank and the verification is completed in accordance with the terms stipulated by the Bank. The costs of the verification if conducted by Borrower's auditor shall be for the account of the Borrower.

Audits

Subject to surprise audits, not less frequently than quarterly.

Fees

The Borrower will be responsible for payment of the following fees:

- All costs including legal fees and out of pocket expenses incurred for the preparing and obtaining of security and documentation.
- \$25.00 administration fee per lease booked, plus out of pocket expenses are to be recovered from the lessor. e.g. bank reports \$12.
- \$25.00 administration fee per lease booked with rate protection is to be recovered from the lessor.

FACILITY 6**CORPORATE MASTERCARD****Amount**

\$50,000

GENERAL**Reporting**

The following reports are required to assist the Bank in monitoring the value of security and financial trends:

Monthly

By the 30th. day after each month end, a copy of the following reports signed by an authorized signing officer of the Borrower is to be submitted to the Bank:

- Internally prepared consolidated financial statements for Bodkin Financial Corporation.

In support of the Operating Credit

- A listing of new and used equipment purchased pending funding of the respective lease by a third party and ultimate securitization. Listing to include equipment description, make, model, model year, serial number, (if applicable), cost, date acquired. In addition, a listing of lessees, cost and date acquired may be provided as applicable.
- A declaration of available undrawn securitization credit with Sun Life Insurance Company. (i.e. with margin report)
- Aged listing of used vehicles. To include date acquired, acquisition cost, year, make and model.
- Aged listing of customer accounts receivable.

In support of the Wholesale Leasing Credit, the Heavy Duty Truck and Trailer Leasing Credit, the New Equipment Leasing Credit and the Governmental New Equipment Leasing Credit

- Monthly aged listing (in summary form) of past due lease receivables. The status of those lease contracts over 60 days past due is to be outlined along with the corrective action contemplated if allowance for doubtful accounts has not been provided.

Annually

Financial statements for the following companies will be provided within 120 days of each fiscal year-end:

- Audited Consolidated financial statements for Bodkin Financial Corporation.
- Audited financial statements for Bodkin Leasing Corporation.
- Audited financial statements for Bodkin Capital Corporation.
- Notice to reader financial statements for Bodkin Vehicle Leasing Corporation.
- Notice to reader financial statements for Disc Automotive Software Systems Inc.
- Notice to reader financial statements for 2087241 Ontario Limited
- Notice to reader financial statements for 2087248 Ontario Limited
- Notice to reader financial statements for 2087247 Ontario Limited
- Notice to reader financial statements for 2079343 Ontario Inc.
- Notice to reader financial statements for RVS Credit Corporation

COVENANTS/CONDITIONS & UNDERSTANDINGS

1. The ratio of the Borrower's (combined) Total Debt to Tangible Net Worth (TNW), must not exceed a ratio of **6.5:1 to 1**. The term "Tangible Net Worth" shall mean the recorded consolidated financial statement value of shareholder's equity in the business, including the value of preference shares, plus any loan made by the shareholders to the business and formally subrogated in favour of the Bank, on terms acceptable to the Bank, minus the following, if not already provided for or deducted; allowance for such intangible assets as leasehold improvements, goodwill, franchises, patent rights, copyrights and trademarks; reserve amounts for credit losses, amounts due by officers, subsidiaries and/or affiliates, and provision for income tax deemed reasonable by the Bank. In addition to the foregoing, relating to the outstanding securitized lease assets; the higher of the trailing 12 month average loss rate (%) or 1%, times 1.25, times the outstanding securitized lease assets, is to be deducted from TNW.

Total Debt to exclude deferred revenues and deferred taxes and is to include \$3,000,000 provided to the borrower from Sun Life ("Sun Life") Assurance Company of Canada by way of subordinated debenture.

2. Covenant relative to Total Debt to Tangible Net Worth is to be monitored by way of Internally prepared Monthly Operating Statements (MOS) (Bodkin Financial Corporation) which are to be provided by the borrowers within 30 days of each month end. Any deficiencies as evidenced by the monthly statements are to be remedied by the 30th day following the next month end (i.e. Deficiency on May 31st MOS be remedied by June 30th next).

3. TNW shall at all times be no less than 80% of the outstanding Securitization Proceeds Receivable. TNW, relative to this covenant, will include the \$3,000,000 subordinated debenture provided by Sun Life. The deduction relative to the outstanding securitized lease assets (i.e. the higher of the trailing 12 month average loss rate (%) or 1%, times 1.25, times the outstanding securitized lease assets) is not to be applied to TNW for this measure.
4. Earnings Before Interest and Taxes (EBIT), to Interest Expense shall be no less than 1.75 to 1. Interest expense is to include interest payable on the Sun Life subordinated debenture.
5. Undertaking **by Bodkin Financial Corporation and company principals** relative to covenants as follows:
 - I. No dividends, other capital withdrawals, bonuses, advances to shareholders, directors, officers or affiliated companies that would cause the Borrower to breach any condition of credit are permitted.
 - II. No changes in ownership or redemption of shares are permitted without the prior written approval of the Bank.
 - III. No mergers, acquisitions or material change in the Borrower's line of business are permitted without the prior written approval of the Bank.
 - IV. Guarantees or other contingent liabilities are not to be entered into and assets are not to be further encumbered without the prior written approval of the Bank.
 - V. To ensure that any Breach of the Borrower's Leverage Covenant will be corrected promptly (as set out in 2 above).
 - VI. Any lease portfolio acquisition requires the Bank's prior approval.
 - VII. Company to advise the Bank in writing prior to commencing any securitization activities other than with Sun Life. Bank's prior notification of any new CIBC World Market tranches is required and is to include the provision of a proforma balance sheet indicating reserve balances on a go forward basis.
 - VIII. None of the above actions are to take place without the prior written approval of the Bank, which will not be unreasonably withheld.
6. Annual confirmation from Sun Life is to be provided confirming their continued acceptability of the Bodkin securitized portfolio (the annual renewal of credit facilities letter from Sun Life shall be considered acceptable confirmation).
7. All Banking operations of the "Borrowers" including Cash Management are to be maintained with Bank of Montreal.
8. The Borrower is to permit the Bank's representative to enter upon the Borrower's premises and must make available its records at reasonable periods for audit purposes.
9. Bank financing is subject to periodic review, not less frequently than annually.

SECURITY (all held except where indicated as to be obtained)

From Bodkin Financial Corporation

1. General Security Agreement, representing a first charge over all assets.
2. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
3. Letter of Undertaking Signed by Bodkin Financial Corporation and company principals relative to covenants as outlined in Covenants (No. 5) above.
4. Operating Loan Agreement.
5. Priority Agreements satisfactory to the Bank's solicitors, with Sun Life Insurance Company, Industrial Alliance Insurance and Financial Services Inc. (formerly National Life Assurance Company of Canada) and Bank of Montreal.
6. Subrogations / postponements as required.
7. Landlord's Waiver.
8. Copy of and assignment of "All Risk" insurance policy (including Garage Policy) with loss payable to Bank of Montreal and containing a standard mortgage clause. Copy of Lessor's Contingent Liability insurance (\$1,000,000. minimum coverage).
9. FirstBank Fixed Rate Lending Agreement, Monthly Adjustable (re: CDOR borrowing).
10. MasterCard Corporate Card Account Agreement.
11. Signed Term Sheet.
12. Amendment and Acknowledgement Agreement confirming indebtedness and continuing effect of all security.
13. Priority/Inter-Creditor Agreement among BMO, Sun Life Assurance Company of Canada, Industrial Alliance Insurance and Financial Services, the Borrower, Bodkin Leasing Corporation and Bodkin Capital Corporation.

SUNDRY

1. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087241 Ontario Limited.
1. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087248 Ontario Limited.
3. Guarantee in the amount of \$35,000,000 with enabling resolution from 2087247 Ontario Limited.
4. Guarantee in the amount of \$35,000,000 with enabling resolution from 2079343 Ontario Limited.
5. Guarantee in the amount of \$35,000,000 with enabling resolution from RVS Credit Corporation.

6. Guarantee in the amount of \$35,000,000 with enabling resolution from BFG Investment Corporation (obtained under guidance of solicitor as deemed necessary under MBO transaction).
7. Guarantee in the amount of \$35,000,000 with enabling resolution from BFG Acquisition Corporation (obtained under guidance of solicitor as deemed necessary under MBO transaction).
8. Postponement Agreement signed by BMO, BFG Acquisition Corporation and the Borrower, subordinating obligations to the Bank.
9. Postponement Agreement signed by BMO, Bodkin Equipment Leasing Corporation and the Borrower, subordinating obligations to the Bank. (Note: #s 22 & 23 restrict redemptions and payments of preference shares)
10. Favourable solicitor's letter of opinion re continued Bank first ranking security as it relates to both the acquisition and amalgamation (with 551520 Ontario Limited)
11. Solicitor's Conflict Letter.

From Bodkin Leasing Corporation

1. Guarantee in the amount of \$35,000,000 with enabling resolution from Bodkin Leasing Corporation.
2. General Security Agreement, representing a first charge over all assets.
3. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (Includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
4. Amendment and Acknowledgement Agreement confirming guarantee and continuing effect of all security.

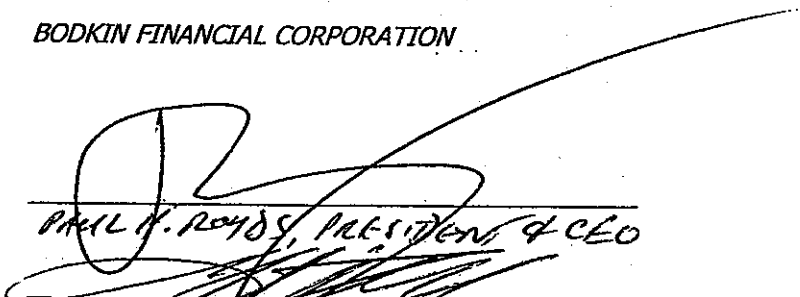
From Bodkin Capital Corporation

1. Guarantee in the amount of \$35,000,000 with enabling resolution from Bodkin Capital Corporation.
2. General Security Agreement, representing a first charge over all assets.
3. Special Security Agreement re: Leased Vehicles with Enabling Resolution, registered in first position under P.P.S.A. in Ontario and under the appropriate registry offices for every Province in Canada and Territories. (includes 3% Pre-payment Premium Agreement) along with Solicitor's favourable Letter of Opinion.
4. Amendment and Acknowledgement Agreement confirming guarantee and continuing effect of all security.

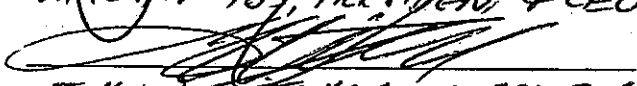
The Summary of Terms and Conditions contained in this Term Sheet are accepted.

this 23RD day of April, 2009.

BODKIN FINANCIAL CORPORATION



PAUL H. ROYDS, PRESIDENT & CEO



JOHN D. MITCHELL, EXECUTIVE VICE PRESIDENT & CFO

TAB K

**THIS IS EXHIBIT "K" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "S. Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

BODKIN FINANCIAL CORPORATION

2009 Consolidated Financial Statements

BODKIN FINANCIAL CORPORATION
2009 Consolidated Financial Statements

Contents

	Page
Auditors' Report	1
Consolidated Balance Sheet	2
Consolidated Statement of Operations and Retained Earnings	3
Consolidated Statement of Cash Flows	4
Notes to Consolidated Financial Statements	5 - 18



PKF Hill LLP

11 Valleybrook Drive, Suite 200

Toronto, Ontario, Canada M3B 2S6

Phone: 416 448-0171

Fax: 416 448-7403

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Auditors' Report

To the Directors of
Bodkin Financial Corporation

We have audited the consolidated balance sheet of Bodkin Financial Corporation as at August 31, 2009 and the consolidated statements of operations and retained earnings and cash flows for the year then ended. These consolidated financial statements have been prepared, with the unanimous consent of the shareholders, in accordance with Canadian generally accepted accounting principles using differential reporting options available to non-publicly accountable enterprises, as described in note 5 to the consolidated financial statements. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at August 31, 2009 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

PKF Hill LLP

Chartered Accountants, Licensed Public Accountants
February 19, 2010

BODKIN FINANCIAL CORPORATION**Consolidated Balance Sheet**

As at August 31

	2009	2008
ASSETS		
Current assets		
Cash	\$ -	\$ 298,374
Accounts receivable (note 6)	4,787,498	2,525,276
Prepaid expenses	51,647	65,629
Due from related parties (note 7)	150	150
Finance receivables held for securitization	3,141,945	2,400,284
Vehicles and equipment held for lease or sale (note 8)	1,093,768	1,069,578
Net investment in leases (note 9)	4,660,266	3,602,097
Securitization proceeds receivable (note 10)	-	4,670,887
	13,735,274	14,632,275
Net investment in leases (note 9)	7,730,178	5,351,584
Securitization proceeds receivable (note 10)	6,541,442	2,697,195
Property, plant and equipment (note 11)	346,438	464,013
Goodwill	250,000	250,000
Deferred finance costs	123,112	229,216
	<u>\$ 28,726,444</u>	<u>\$ 23,624,283</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities		
Bank indebtedness (note 12)	\$ 4,674,135	\$ -
Accounts payable and accrued liabilities	1,750,067	1,869,219
Income taxes payable	1,943,444	394,776
Lease financing (note 13)	9,392,196	2,569,247
Deferred securitization income (note 14)	952,330	616,757
Future income taxes (note 15)	507,000	2,000,000
Due to Sun Life Assurance Company of Canada (note 16)	3,000,000	-
	22,219,172	7,449,999
Lease financing (note 13)	-	4,475,127
Deferred securitization income (note 14)	783,622	1,261,405
Future income taxes (note 15)	95,583	914,583
Due to Sun Life Assurance Company of Canada (note 16)	-	3,000,000
	23,098,377	17,101,114
Going concern (note 2)		
Shareholders' equity		
Common shares (note 17)	257	257
Preferred shares (note 18)	3,695,000	3,695,000
Retained earnings	1,932,810	2,827,912
	5,628,067	6,523,169
	<u>\$ 28,726,444</u>	<u>\$ 23,624,283</u>

See accompanying notes

On behalf of the Board

Director

Director

BODKIN FINANCIAL CORPORATION**Consolidated Statement of Operations and Retained Earnings**
Year ended August 31

	2009	2008
Revenue		
Securitization income	\$ 5,275,455	\$ 7,533,030
Finance and other income	1,133,251	621,093
Gain on sale of vehicles and equipment	3,422,539	3,243,974
	<u>9,831,245</u>	<u>11,398,097</u>
Direct expenses		
Interest	551,884	627,477
Write-down of vehicles and equipment held for lease or sale	1,013,891	562,331
Provision for credit losses and impaired leases	3,478,968	2,902,565
	<u>5,044,743</u>	<u>4,092,373</u>
Contribution from leasing operations	4,786,502	7,305,724
Overhead and administrative expenses	5,583,657	6,595,725
Income (loss) before income tax provision (recovery)	<u>(797,155)</u>	<u>709,999</u>
Income tax provision (recovery)		
Current	2,015,000	527,000
Future (note 15)	(2,312,000)	(344,000)
	<u>(297,000)</u>	<u>183,000</u>
Net income (loss)	<u>(500,155)</u>	<u>526,999</u>
Retained earnings, beginning of year		
As previously stated	5,157,536	4,827,009
Accounting changes (note 3)	(2,329,624)	(1,900,894)
As restated	2,827,912	2,926,115
Dividends paid	<u>(394,947)</u>	<u>(625,202)</u>
Retained earnings, end of year	<u>\$ 1,932,810</u>	<u>\$ 2,827,912</u>

See accompanying notes

BODKIN FINANCIAL CORPORATION**Consolidated Statement of Cash Flows**

Year ended August 31

	2009	2008
Operating activities		
Net income (loss)	\$ (500,155)	\$ 526,999
Items not involving cash		
Amortization of property, plant and equipment	154,767	236,382
Amortization of deferred finance costs	106,104	110,457
Future income taxes	(2,312,000)	(344,000)
	(2,551,284)	529,838
Net change in non-cash working capital items (note 19)	(1,726,785)	1,263,596
Cash flows from operating activities	(4,278,069)	1,793,434
Financing activities		
Bank indebtedness	4,674,135	(1,913,461)
Proceeds of lease financing	5,657,523	3,796,633
Repayment of lease financing	(3,309,701)	(3,588,428)
Dividends paid - preference shares	(212,000)	(212,581)
Dividends paid - common shares	(182,947)	(412,621)
Cash flows from financing activities	6,627,010	(2,330,458)
Investing activities		
Net investment in leases (note 9)	(3,436,763)	(683,417)
Securitization proceeds receivable	826,640	1,474,991
Proceeds on disposal of property, plant and equipment	-	128,263
Purchase of property, plant and equipment	(37,192)	(84,439)
Cash flows from investing activities	(2,647,315)	835,398
Net change in cash during the year	(298,374)	298,374
Cash, beginning of year	298,374	-
Cash, end of year	\$ -	\$ 298,374

Supplementary cash flow information (note 19)

See accompanying notes

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements
Year ended August 31

1. Nature of operations

The accompanying consolidated financial statements include the accounts of Bodkin Financial Corporation and its operating subsidiaries, Bodkin Leasing Corporation, Bodkin Capital Corporation, Bodkin Vehicle Leasing Corporation and Disc Automotive Software Systems Inc., collectively hereinafter referred to as the "Company".

Bodkin Leasing Corporation was incorporated in 1950 under the Companies Act, 1934 and provides vehicle financing to a wide range of commercial clientele nationally.

Bodkin Capital Corporation was incorporated in 1996 under the Canada Business Corporations Act and provides equipment financing to a wide range of commercial clientele nationally.

Bodkin Vehicle Leasing Corporation was incorporated in 1996 under the Canada Business Corporations Act and has limited activity.

Disc Automotive Software Systems Inc. was incorporated in 1985 under the Canada Business Corporations Act and develops, licences and supports proprietary application software for the Company and its affiliates.

2. Going concern

These financial statements have been prepared in accordance with Canadian generally accepted accounting principles applicable to a going concern, which assumes that the Company will continue in operation for the foreseeable future and will be able to realize its assets and discharge its liabilities in the normal course of operations.

Several adverse conditions and events have cast doubt upon the validity of this assumption. Significant credit losses have resulted in operating losses that have significantly eroded the Company's equity. In addition, the Company has liquidity concerns, exacerbated by a tax liability with Canada Revenue Agency ("CRA"). The Company is in breach of certain financial covenants relating to its bank credit facilities with Bank of Montreal ("BMO") (notes 12, 13, 20 and 22) and its credit facilities with Sun Life Assurance Company of Canada ("Sun Life") (notes 10, 16, 20 and 22). Notwithstanding these covenant breaches, Sun Life has renewed the Company's securitization facility in the amount of \$80,000,000.

In addition to the financial covenants and ratios that are required by Sun Life, the Company is required to report monthly delinquency and loss ratios on the portfolio of securitized leases held by Sun Life. A breach of any of the delinquency and loss ratios may result in the immediate damping of releases of any excess cash from the limited recourse reserves (note 10) until the ratios reach acceptable levels. As at August 31, 2009, the Company was in breach of certain of the delinquency and loss ratios and, as a result, any possible releases of excess funds in the limited recourse reserves have been suspended until such time as Sun Life no longer considers the Company to be in breach.

As a result of the suspension of cash releases from the Sun Life limited recourse reserve, the Company is required to reclassify the current portion of the securitization proceeds receivable to long-term assets, in accordance with Section 1510.01 of the Canadian Institute of Chartered Accountants ("CICA") Handbook. Accordingly, the Company has reclassified \$2,136,467 of securitization proceeds receivable to long-term assets. Had the Company not reclassified this amount, total current assets would have been \$15,871,741.

In addition, as a result of the covenant breaches with Sun Life and BMO, the Company is required to reclassify its long-term debt obligations as current liabilities, in accordance with EIC-122 of the CICA Handbook. Accordingly, the Company has reclassified \$6,151,445 of long-term lease financing and the \$3,000,000 subordinated debenture due to Sun Life as current liabilities. Had the Company not reclassified these amounts, total current liabilities would have been \$13,067,727.

The Company's continuation is dependent upon its ability to obtain additional capital, to renew its bank facilities, to negotiate payment terms with CRA and to restore and maintain profitable operations. The Company has entered into negotiations with potential investors; however, there is no assurance that an agreement will be reached.

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

2. Going concern — continued

In addition to the Sun Life facility renewal, the Company has tightened its credit criteria, has provided adequately for any future credit losses, has intellectual property and other intangible assets which management believes have value in excess of its net book value, and is facing an improved economy. All of these factors are believed to be indicative of future profitable operations. Accordingly, management believes an investor will be found and that the Company is a going concern. Therefore, these consolidated financial statements do not reflect adjustments that would be necessary if the going concern assumption were not considered appropriate. If the going concern assumption was not considered appropriate, adjustments would be necessary to the carrying values of assets and liabilities, the reported revenues and expenses, and the balance sheet classifications used.

3. Accounting changes

During the year, the Company determined that its application of the provisions required in Accounting Guideline — 12, Transfer of Receivables ("AcG-12") issued by the Canadian Institute of Chartered Accountants ("CICA") had been inappropriately applied. In addition, the Company changed its tax filing position with respect to commissions paid to brokers for leasing transaction referrals. The nature of the changes and the impact on the current and prior years is disclosed below.

(a) Retained interest

On initial adoption of AcG-12, management concluded that the securitization proceeds receivable (note 10) did not represent a retained interest. This interpretation continued through to the end of 2008.

During the year, additional interpretative guidance was issued by the Financial Accounting Standards Board related to FAS-140 (the American standard on which AcG-12 was based), and it was determined that the cash reserves stipulated in the securitization agreement with Sun Life represented a retained interest. Accordingly, the Company should have recognized securitized income only to the extent it had not retained an interest in the transaction.

The impact of the change was a pre-tax decrease in retained earnings at August 31, 2008 of \$912,829, of which \$85,525 related to the 2008 fiscal year and \$827,304 to previous fiscal years. The comparative statements have been adjusted to reflect these changes. Securitization income for 2008 decreased by \$85,525, and deferred securitized income at August 31, 2008 increased by \$912,829.

(b) Recourse obligation reserve

In accordance with AcG-12, the fair value of any future recourse obligation must be deducted from the proceeds of securitization at the time of transfer. Prior to the current year, even though the Company was obligated to repurchase securitized leases in default, the Company was only recognizing a recourse obligation to the extent a lease had been deemed to be in default or a loss had been realized. As a result, a provision had not been made for future credit defaults.

The impact of the change was a pre-tax decrease in retained earnings at August 31, 2008 of \$2,536,212, of which \$447,205 related to the 2008 fiscal year and \$2,089,007 to previous fiscal years. The comparative statements have been adjusted to reflect these changes. For 2008, securitization income decreased by \$766,360 and the provision for credit losses and impaired leases decreased by \$319,155 (a net reduction in income of \$447,205). At August 31, 2008, accounts receivable and net investment in leases increased by \$655,526 and \$109,175 respectively, and securitization proceeds receivable decreased by \$3,300,913 (a net reduction of assets of \$2,536,212).

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements
Year ended August 31

3. Accounting changes — continued

(c) Current and future income taxes

During the year, the Company changed its tax filing position with respect to commissions paid to brokers for leasing transaction referrals, deducting these in the year incurred instead of capitalizing the costs and taking capital cost allowances on the amounts.

The impact on the 2008 comparative figures in the consolidated financial statements as a result of this change is a reduction in current income taxes of \$629,000 and an increase in future income taxes of \$647,000, resulting in a net increase in the Company's income tax provision of \$18,000.

The remaining change in the 2008 current and future income taxes is the result of the adjustments in (a) and (b) which resulted in an increase in income taxes payable and current income tax provision of \$47,000, a reduction of future income taxes payable of \$1,184,417, a reduction of the future income tax provision of \$169,000, and an increase in opening retained earnings as at August 31, 2007 of \$1,015,417.

(d) Summary of accounting changes

	2008	2007 and prior	Total
Retained interest	\$ (85,525)	\$ (827,304)	\$ (912,829)
Recourse obligation	(447,205)	(2,089,007)	(2,536,212)
Current and future income taxes			
Commissions	(18,000)	-	(18,000)
Retained interest and recourse obligation	122,000	1,015,417	1,137,417
	<u>\$ (428,730)</u>	<u>\$ (1,900,894)</u>	<u>\$ (2,329,624)</u>

4. Change in accounting policies

During the year, CICA Handbook Section 1400, Going Concern, and Section 1535, Capital Disclosures came into effect and have been reflected in these financial statements.

5. Summary of significant accounting policies

The Company, with the unanimous consent of its shareholders, has elected to prepare its financial statements in accordance with Canadian generally accepted accounting principles, using the differential reporting option available to non-publicly accountable enterprises for goodwill as described below:

Goodwill

The Company has elected to test goodwill for impairment only when an event or circumstance occurs that indicates that the fair value of goodwill may be less than its carrying amount.

In addition, the Company has applied the following significant accounting policies without reference to differential reporting:

Finance receivables held for securitization

The Company securitizes leases in the normal course of operations. Once leases are designated for securitization, they are classified as finance receivables held for securitization and all related income is deferred until the securitization transaction is complete.

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

5. Summary of significant accounting policies — continued

Vehicles and equipment held for lease or sale

Vehicles and equipment held for lease or sale are generally comprised of off-lease vehicles and equipment, and trade-in and company vehicles. These vehicles and equipment are carried at the lower of carrying value or estimated fair value less selling costs.

Net investment in leases

The Company accounts for its net investment in leases as direct finance leases. The net investment in leases is comprised of future minimum lease payments less unearned income and any provisions for credit losses.

Securitization

The Company securitizes leases on a limited recourse basis with Sun Life. In accordance with AcG-12, the securitization transactions result in the sale and derecognition of the leases from the Company's balance sheet. A portion of the securitization proceeds ("securitization proceeds receivable") is held in trust by Sun Life Financial Trust Inc. as a limited recourse reserve for credit losses.

Property, plant and equipment

Property, plant and equipment are recorded at cost and are being amortized over their estimated useful lives on the following basis. The annual amortization rates and methods are as follows:

Office equipment	20% declining balance
Leasehold improvements	5 years straight-line
Computer hardware	30% declining balance
Computer software	5 years straight-line

Goodwill

Goodwill arose from the refinancing and restructuring of the Company in 2005. Shareholders' equity at the time of the reorganization was restated to reflect fair value. The excess of the fair value of the net assets over their carrying value was recorded as goodwill. Notwithstanding the going concern issue outlined in note 2, it is management's assessment that an impairment of the goodwill has not occurred.

Deferred finance costs

Legal and other costs relating to financing and restructuring of the Company in 2005 were deferred and are being amortized over five years.

Income taxes

Income taxes are calculated using the liability method of tax allocation accounting. Temporary differences arising from the difference between the tax basis of an asset or liability and its carrying amount on the balance sheet are used to calculate future income tax liabilities or assets. Future income tax liabilities or assets are calculated using the substantively enacted tax rates and laws that are expected to be in effect in the periods that the temporary differences are expected to reverse. The effect of changes in rates is included in earnings in the period in which the changes are substantively enacted.

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements
Year ended August 31

5. Summary of significant accounting policies — continued

Revenue recognition

- (a) In accordance with AcG-12, securitization income is recognized as net proceeds of securitization less the following items:
- (i) the proportionate amount of the net proceeds represented by the retained interest;
 - (ii) recourse reserves for expected future credit losses and related securitization income reversals for expected future delinquent leases; and
 - (iii) estimated future costs of servicing the leases, which includes the administration and collection of receivables on the funder's behalf.

Securitization income also includes interest earned on the securitization proceeds receivable, which is held in trust by Sun Life Financial Trust Inc. as a limited recourse reserve for credit losses.

The retained interest and the provision for future servicing costs are included in deferred securitization income and amortized into securitization income over the remaining term of the related leases.

- (b) Finance income is recognized over the term of the lease at a constant rate of return, following the initial recognition of finance income equal to initial direct costs.
- (c) The gain or loss on sale of vehicles and equipment, less reconditioning and selling costs, is recognized in income at the time of disposal.

Provision for credit losses and impaired leases

The provision for credit losses and impaired leases for securitized and direct financing leases is reviewed monthly for adequacy considering economic conditions, collateral values and credit quality indicators (including charge off experience and levels of past due receivables and non-performing assets). Changes in economic conditions or other events affecting specific obligors or industries may necessitate additions or deductions to the provision for credit losses and impaired leases. It is management's judgement that these reserves are adequate to provide for credit losses and impaired leases inherent in the portfolio.

As of August 31, 2009, the allowance for doubtful accounts (note 6), provision for inventory write-downs (note 8), and the Sun Life recourse obligation reserve (note 10), totalled \$10,682,715 (2008 - \$8,493,068).

Use of estimates

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet date and the reported amounts of revenues and expenses during the year. Actual results could differ from those estimates.

BODKIN FINANCIAL CORPORATION**Notes to Consolidated Financial Statements****Year ended August 31****5. Summary of significant accounting policies — continued**Future accounting changes

Effective for fiscal years commencing on or after January 1, 2011, all private companies will be required to prepare their financial statements in accordance with International Financial Reporting Standards or Accounting Standards for Private Enterprises ("ASPE"). It is expected that the Company will adopt ASPE. Early adoption is permitted.

The Company will be required to adopt Section 3064, Goodwill and Intangibles in its next fiscal year. Section 3064 clarifies standards for identifying, recognizing and measuring intangible assets and it is not expected to have a material impact on the Company's financial statements.

6. Accounts receivable

	2009	2008
Accounts receivable, gross	\$ 9,490,930	\$ 6,055,810
Allowance for credit losses		
Balance, beginning of the year	(3,530,534)	(2,430,928)
Provisions charged to operations	(3,478,968)	(2,902,565)
Losses, net of recoveries	2,306,070	1,802,959
Balance, end of the year	(4,703,432)	(3,530,534)
Accounts receivable, net	\$ 4,787,498	\$ 2,525,276

7. Due from related parties

Advances to related parties

	2009	2008
BFG Acquisition Corporation	\$ 100	\$ 100
BFG Investment Corporation	50	50
	\$ 150	\$ 150

These amounts have no fixed terms of repayment and are non-interest bearing.

8. Vehicles and equipment held for lease or sale

	2009	2008
Vehicles and equipment held for lease or sale, gross	\$ 3,139,878	\$ 2,419,820
Less: provision for inventory write-down	(2,046,110)	(1,350,242)
Vehicles and equipment held for lease or sale, net	\$ 1,093,768	\$ 1,069,578

BODKIN FINANCIAL CORPORATION
Notes to Consolidated Financial Statements
Year ended August 31

9. Net investment in leases

	2009	2008
Total minimum lease payments receivable	\$ 14,304,995	\$ 10,270,406
Less: unearned finance income	1,914,551	1,316,725
	<u>12,390,444</u>	<u>8,953,681</u>
Less: current portion	4,660,266	3,602,097
	<u>\$ 7,730,178</u>	<u>\$ 5,351,584</u>

10. Securitization

As at year end, net securitization proceeds receivable with respect to the portfolio of securitized leases, representing the limited recourse reserve held by Sun Life, is as follows:

	2009	2008
Securitization proceeds receivable - gross	\$ 10,344,579	\$ 10,854,043
Finance receivable held for securitization - accrued reserve	130,038	128,774
Less: recourse obligation reserve	<u>(3,933,175)</u>	<u>(3,614,735)</u>
	6,541,442	7,368,082
Less: current portion	-	4,670,887
	<u>\$ 6,541,442</u>	<u>\$ 2,697,195</u>

Interest earned on the limited recourse reserve becomes part of the limited recourse reserve. Total interest earned on the limited recourse reserve for the year amounted to \$123,887 (2008 - \$392,375).

As the Company was in breach of its covenants with Sun Life at year end (notes 2 and 20), the limited recourse reserve has been presented as a long-term asset. Had the Company not have been in breach of its covenants, the scheduled aggregate receipts of securitization proceeds receivable in each of the next five years would be as follows:

2010	\$ 2,136,467
2011	2,344,865
2012	1,369,673
2013	554,469
2014	<u>135,968</u>
	<u>\$ 6,541,442</u>

Securitization activity is as follows:

	2009	2008
Proceeds from securitization of leases	\$ 87,177,209	\$ 103,225,553
Assets under administration from the securitization of leases	163,199,529	176,464,222

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

10. Securitization — continued

Effective May 2008, the Company began repurchasing delinquent leases using the limited recourse reserves. If the resulting balance in the reserves falls below a fixed percentage of the aggregate (discounted value of the) securitized portfolio of leases, the Company is required to remit to Sun Life such amount as would be required to restore the reserves to the minimum level. Conversely, provided there are no covenant or other breaches of the terms and conditions of the facility, if the balances in the limited recourse reserves exceed a fixed percentage of the aggregate (discounted value of the) securitized portfolio of leases, the excess cash would be released to the Company on a periodic basis. However, as at August 31, 2009, the Company was in breach of certain of the delinquency and loss ratios and, as a result, any possible releases of excess funds in the limited recourse reserves have been suspended until such time as Sun Life no longer considers the Company to be in breach (note 2).

For all securitizations commencing December 1, 2008, the Bodkin Group of Companies as defined in note 22, had provided a limited recourse first loss guarantee to Sun Life of 1.5% of the original funded amount. This recourse first loss guarantee is to be exhausted before the Company can use the limited recourse reserves to repurchase delinquent leases. As of August 31, 2009, \$19,051 of the first loss guarantee had been paid by the Company. As part of the renewal of the Sun Life securitization facility in February 2010, the limited recourse first loss guarantee was eliminated (notes 20 and 22).

11. Property, plant and equipment

	2009		2008	
	Cost	Accumulated amortization	Net	Net
Office equipment	\$ 229,432	\$ 184,826	\$ 44,806	\$ 54,951
Leasehold improvements	52,053	51,468	585	1,055
Computer hardware	509,556	455,690	53,866	62,000
Computer software	1,342,229	1,095,048	247,181	346,007
	<u>\$ 2,133,270</u>	<u>\$ 1,786,832</u>	<u>\$ 346,438</u>	<u>\$ 464,013</u>

12. Bank indebtedness

The Company has banking facilities with the Bank of Montreal ("BMO") consisting of an operating credit for the Company of \$13,000,000 and wholesale leasing credits for Bodkin Leasing Corporation and Bodkin Capital Corporation for term loan lease financing for vehicles and equipment in the aggregate amount of \$22,000,000. The operating credit bears interest at the BMO prime rate plus 1.75%. The wholesale leasing credits bear interest on a floating rate basis that range from the lesser of (i) BMO prime rate plus 1.5% to 2.0% and (ii) CDOR plus 300 to 350 bps. The wholesale leasing credits provide for fixed rate term financing bearing interest that ranges from BMO cost of funds plus 1.75% to 2.25%. Bodkin Financial Corporation is the named borrower for all credit facilities. The facilities are secured by general security agreements over the assets of the Company, an assignment of insurance, a fixed charge on certain leasing assets of Bodkin Leasing Corporation and Bodkin Capital Corporation, a priorities agreement among Sun Life, Industrial Alliance Insurance and Financial Services Inc., BMO and the Company, and guarantees in the amount of \$35,000,000 from certain companies in the Bodkin Group of Companies (note 22).

Interest expense for the operating credit for the year amounted to \$204,779 (2008 - \$268,392).

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

13. Lease financing

	2009	2008
BMO fixed rate notes bearing interest ranging from 3.61% to 5.63%, payable by monthly instalments of principal plus interest and secured by a fixed charge on the related leasing assets, and as described in notes 12 and 22	\$ 8,324,726	\$ -
BMO notes bearing interest at the floating rate equivalent to the lesser of the BMO prime rate plus 2.25% (2008 - BMO prime rate plus 0.50%) and the Canadian Dollar Offering Rate (CDOR) plus 350 basis points (2008 - CDOR plus 200 basis points), payable by monthly instalments of principal plus interest and secured by a fixed charge on the related leasing assets, and as described in notes 12 and 22	1,052,877	2,136,664
Industrial Alliance Insurance and Financial Services Inc. notes bearing interest at fixed rates ranging from 0% to 3.75%, payable by monthly instalments of principal plus interest and secured by liens on the related leasing assets	14,593	44,233
BMO notes bearing interest at the floating rate equivalent to the lesser of the BMO prime rate plus 1.50% (2008 - BMO prime rate) and the CDOR plus 300 basis points (2008 - CDOR plus 150 basis points), payable by monthly instalments of principal plus interest and secured by a fixed charge on the related leasing assets, and as described in notes 12 and 22	-	4,863,477
	9,392,196	7,044,374
Less: current portion	9,392,196	2,569,247
	<u>\$ -</u>	<u>\$ 4,475,127</u>

Payment of the above debts will be made principally from cash received in respect of the Company's net investment in leases.

As the Company was in breach of its covenants with BMO at year end (note 20), the lease financing has been presented as a current liability. Had the Company not been in breach of its covenants, the aggregate amount of principal payments required in each of the next five years would be as follows:

2010	\$ 3,240,751
2011	2,796,712
2012	2,191,479
2013	1,083,800
2014	79,454
	<u>\$ 9,392,196</u>

Interest expense for the lease financing credit for the year amounted to \$354,852 (2008 - \$363,262).

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

16. Due to Sun Life Assurance Company of Canada

On December 12, 2005, the Company entered into a subordinated Debenture Agreement with Sun Life. Sun Life advanced \$3,000,000 by way of a non-revolving term loan, which matures on December 31, 2010. The loan bears interest at a fixed rate of 8.46% per annum, with monthly payments of interest only and is secured by a general security agreement and the guarantees of certain corporate shareholders of the Company (note 22).

As the Company was in breach of its covenants with BMO at year end (note 20), the subordinated debenture has been presented as a current liability. Had the Company not been in breach of its covenants, the subordinated debenture would be presented as a long-term liability.

Interest expense for the year amounted to \$253,800 (2008 - \$253,800) and is included in overhead and administrative expense.

17. Common shares

Authorized

Unlimited common shares

	2009	2008
Issued		
1,000 common shares	\$ 257	\$ 257

18. Preferred shares

Authorized

Unlimited Class A voting preference shares, entitled to cumulative dividends of 8%, redeemable at \$1 per share after December 31, 2010

Unlimited Class B preference shares, non-voting, non-cumulative, redeemable at \$1 per share

	2009	2008
Issued		
2,650,000 Class A preference shares	\$ 2,650,000	\$ 2,650,000
1,045,000 Class B preference shares	1,045,000	1,045,000
	<u>\$ 3,695,000</u>	<u>\$ 3,695,000</u>

In accordance with the terms of the credit agreements with BMO and Sun Life, the Company is subject to certain restrictions with respect to the payment of dividends or the withdrawal of capital, which would include the redemption of the preferred shares. Since the Company is in breach of certain covenants (note 20), the preferred share capital cannot be redeemed and, as such, has been classified as shareholders' equity.

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements

Year ended August 31

19. Statement of cash flows

Other information

	2009	2008
Accounts receivable	\$ (2,262,222)	\$ (1,001,159)
Prepaid expenses	13,982	(21,539)
Finance receivables held for securitization	(741,661)	2,856,765
Vehicles and equipment held for lease or sale (note 8)	(24,190)	(422,298)
Accounts payable and accrued liabilities	(119,152)	(498,460)
Income taxes	1,548,668	536,280
Deferred securitization income	(142,210)	(185,993)
	<u>\$ (1,726,785)</u>	<u>\$ 1,263,596</u>
Interest paid	\$ 813,431	\$ 885,455
Income taxes paid (recovered)	460,956	(26,150)

20. Capital disclosures

The Company is subject to monthly financial covenants and ratios related to its banking facilities with BMO and its credit facilities with Sun Life. The financial covenants and conditions consist of minimum and maximum thresholds based on the consolidated financial statements of Bodkin Financial Corporation:

(a) BMO

- (i) Total Debt to Tangible Net Worth ("TNW") shall not exceed a ratio of 6.5 to 1. With respect to the outstanding securitized lease assets, an amount equal to the higher of the trailing twelve month average loss rate (%) or 1%, times 1.25, times the outstanding securitized lease assets, is to be deducted from TNW;
- (ii) TNW shall be no less than 80% of the outstanding Securitization Proceeds Receivable; and
- (iii) The ratio of earnings before interest and taxes ("EBIT") to interest expense shall be no less than 1.75 to 1.

As at August 31, 2009, the Company is in compliance with (ii), but is not in compliance with (i) and (iii).

(b) Sun Life

- (i) Total Debt to TNW shall not exceed a ratio of 7.5 to 1;
- (ii) The ratio of EBIT to interest expense shall be no less than 1.75 to 1; and

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements
Year ended August 31

20. Capital disclosures — continued

(iii) The Company is required to maintain a minimum shareholders' equity of \$5,000,000.

As at August 31, 2009, the Company is in compliance with (i) and (iii), but is not in compliance with (ii).

Subsequent to year end, the Company renewed its securitization facility agreement with Sun Life in the amount of \$80,000,000. As part of the renewal agreement the initial cash reserve holdback percentage was increased from 5.25% to 6.75% and the minimum threshold percentage of the aggregate securitized portfolio of leases at which excess cash reserve balances may be released increased from 7.0% to 8.5%. As a consequence of these increases in the cash reserve holdback percentages, the \$1,500,000 first loss guarantee has been eliminated (note 22). Notwithstanding the renewal, the facility is currently under an Event of Termination (EOT), as the Company's delinquency and loss rates exceed the maximum delinquency and loss rates as set out in the agreement. At Sun Life's sole discretion, a waiver of the EOT will only be considered when the portfolio shows consistent improved performance and the cash reserve is adequately funded.

The revised covenants are as follows:

- (i) TNW shall be no less than \$7.5 million;
- (ii) Total debt, including the off balance sheet securitized portfolio, to TNW shall not exceed a ratio of 22.5 to 1; and
- (iii) The ratio of EBIT to interest expense shall be no less than 1.75 to 1.

As part of the renewal agreement, the Company has undertaken to provide a limited personal guarantee of BFC's shareholders to further indemnify Sun Life in the event that any units are sold out of trust or against other fraudulent activity.

21. Financial instruments

Credit risk

The Company securitizes leases on a limited recourse basis with Sun Life and is therefore exposed to credit losses on its securitized portfolio.

The Company grants credit to customers in the normal course of the lease business. Credit valuations are performed on a regular basis and the financial statements take into account a provision for credit losses and impaired leases. The Company does not have any credit risk concentration.

Fair value

The fair value of the Company's financial instruments approximate the amounts the financial instruments are carried in the accounts unless otherwise noted.

Interest rate risk

The bank indebtedness and BMO floating rate lease financing are subject to interest rate cash flow risk as the required cash flows to service the financing will fluctuate as a result of changes in market interest rates. The BMO fixed rate lease financing and Sun Life subordinated debenture are subject to interest rate price risk as the interest rate on this financing is fixed. Therefore, as the market rate of interest fluctuates, the fair value of the underlying financing will also fluctuate.

BODKIN FINANCIAL CORPORATION

Notes to Consolidated Financial Statements
Year ended August 31

22. Contingent liability and guarantee

Each of 2087241 Ontario Limited, 2087247 Ontario Limited, 2087248 Ontario Limited, RVS Credit Corporation, 2079343 Ontario Inc., BFG Investment Corporation, BFG Acquisition Corporation, Bodkin Leasing Corporation and Bodkin Capital Corporation (the "Bodkin Group of Companies") has provided a guarantee to BMO and Sun Life, with respect to the indebtedness of the Company.

Each of the companies in the Bodkin Group of Companies has provided a joint and several guarantee in the amount (and in aggregate) of \$35,000,000 to BMO, with respect to the indebtedness of the Company. As at August 31, 2009, the total indebtedness of the Company to BMO was \$13,539,739 (2008 - \$4,531,094).

Each of the companies in the Bodkin Group of Companies, plus Bodkin Vehicle Leasing Corporation and Disc Automotive Software Systems Inc., has provided a guarantee to Sun Life with respect to the \$3,000,000 subordinated debenture owing by the Company to Sun Life. Commencing December 8, 2008, for each tranche of leases securitized with Sun Life, the Bodkin Group of Companies have provided a \$1,500,000 first loss guarantee in favour of Sun Life with respect to the Company's limited recourse guarantee of the payment of receivables under such leases securitized with Sun Life. Accordingly, as at August 31, 2009, the maximum amount guaranteed by the Bodkin Group of Companies, plus Bodkin Vehicle Leasing Corporation and Disc Automotive Software Systems Inc. (and in aggregate) with respect to Sun Life was \$4,500,000 (2008 - \$4,500,000). Subsequent to the year end, as part of the renewal of the securitization agreement with Sun Life, the \$1,500,000 first loss guarantee has been eliminated (note 20).

23. Comparative amounts

Certain comparative amounts have been reclassified from those previously presented to conform to the presentation of the 2009 financial statements.

TAB L

**THIS IS EXHIBIT "L" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "S. Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

BODKIN FINANCIAL CORPORATION**CONSOLIDATED BALANCE SHEET****AS AT AUGUST 31, 2010****(Unaudited)**

	August 2010	August 2009
ASSETS		
Current assets		
Cash	\$ 1,000	\$ 1,037
Accounts receivable	4,580,123	4,787,498
Due from related parties	151	151
Equipment held for lease/sale	748,870	1,093,768
Prepaid expenses	58,588	51,647
Finance receivables held for securitization	-	3,141,945
Net investment in leases	7,989,869	4,660,266
Securitization proceeds receivable	2,872,862	2,878,300
	<hr/> 16,251,463	<hr/> 16,614,612
Deferred finance costs	-	123,112
Net investment in leases	12,667,769	7,730,178
Property plant and equipment	273,692	346,437
Securitization proceeds receivable	4,672,043	3,663,142
Goodwill	250,000	250,000
	<hr/> \$ 34,114,967	<hr/> \$ 28,727,481
	<hr/> <hr/>	<hr/> <hr/>
LIABILITIES AND SHAREHOLDER'S EQUITY		
Current liabilities		
Bank indebtedness	\$ 9,019,395	\$ 4,675,169
Accounts payable and accrued liabilities	1,156,107	1,750,068
Income taxes payable	2,033,477	1,943,444
Current portion of future income taxes	-	507,000
Current portion of long-term lease financing	3,149,120	3,579,900
Deferred securitization income	741,932	952,330
	<hr/> 16,100,031	<hr/> 13,407,911
Long-term lease financing	7,456,217	5,812,296
Note payable	3,000,000	3,000,000
Future income taxes	824,383	95,583
Deferred securitization income	684,065	783,622
	<hr/> 28,064,696	<hr/> 23,099,412
Shareholders' equity		
Share capital	257	257
Preference shares	3,695,000	3,695,000
Retained Earnings	2,355,015	1,932,812
	<hr/> 6,050,272	<hr/> 5,628,069
	<hr/> \$ 34,114,967	<hr/> \$ 28,727,481
	<hr/> <hr/>	<hr/> <hr/>

BODKIN FINANCIAL CORPORATION

CONSOLIDATED STATEMENT OF INCOME AND RETAINED EARNINGS
FOR THE YEAR ENDED AUGUST 31, 2010
(Unaudited)

	August <u>2010</u>	August <u>2009</u>
Securitization Income	\$ 6,191,147	\$ 5,275,455
Financial income	2,405,293	1,133,251
Gain on sale of vehicles and equipment	2,350,404	3,422,539
	<u>10,946,844</u>	<u>9,831,245</u>
Expenses		
Interest	1,078,303	805,684
Write-down of equipment held for lease/sale	1,134,184	1,013,891
Provision for credit losses and impaired leases	2,500,289	3,478,968
	<u>4,712,776</u>	<u>5,298,543</u>
Contribution from leasing operations	6,234,068	4,532,702
Overhead and administrative expenses	5,406,506	5,329,857
	<u>827,562</u>	<u>(797,155)</u>
Income before income taxes		
Income taxes		
Current	43,000	2,015,000
Future	221,800	(2,312,000)
	<u>264,800</u>	<u>(297,000)</u>
Net Income	562,762	(500,155)
Retained earnings, beginning of period	1,932,812	2,827,914
Dividends paid	(140,559)	(394,947)
Retained earnings, end of period	<u>\$ 2,355,015</u>	<u>\$ 1,932,812</u>

TAB M

**THIS IS EXHIBIT "M" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Delivered by Courier & E-Mail

March 14, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheets dated April 20, 2009 and accepted by Bodkin Financial Corporation ("the Borrower") under date of April 23, 2009 (the "**2009 Term Sheet**") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "**2010 Term Sheet**"), as well as numerous supplemental term sheets that followed thereafter (collectively, the "**Term Sheet**").

Acknowledgement

In the Term Sheet, you covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as, your "**Securitization Ratio**"). However, your unaudited interim consolidated financial statements for the fiscal periods ended November 30, 2010, December 31, 2010 and January 31, 2011 disclosed that your Securitization Ratio was 90%, 80% and 80% as at such dates respectively (collectively referred to hereinafter as the "**Securitization Ratio Breaches**").

In the Term Sheet, you also covenanted that your ratio of Earnings Before Interest and Taxes to Interest Expense (as defined therein, and hereinafter referred to as, your "**Interest Coverage Ratio**") would be no less than 1.75 to 1. However, your unaudited interim consolidated financial statements for the fiscal periods ended December 31, 2010 and January 31, 2011 disclosed that your Interest Coverage Ratio was 1.35 to 1 and 1.52 to 1 as at such dates respectively (collectively referred to hereinafter as the "**Interest Coverage Ratio Breaches**"). The whole of the Securitization Ratio Breaches and the Interest Coverage Ratio Breaches shall be referred to as the "**Covenant Breaches**".

The Bank of Montreal ("the Bank") has not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet, we do not intend to waive, nor shall we be taken to have waived, any of the Covenant

Breaches (as such term is defined herein) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof.

We ask that the Borrower acknowledge the excesses, as outlined herein, by signing below. Please return the original executed acknowledgement to the Bank at your earliest convenience.

Yours truly,

BANK OF MONTREAL

By: 

Name: Paul Findlay

Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

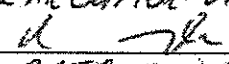
Dated this 15TH day of March, 2011.

BODKIN FINANCIAL CORPORATION

By: 

Name: GLENN D. MITCHELL

Title: EXECUTIVE VICE PRESIDENT & CFO


Name: RAJA SINGH

Title: SENIOR VICE PRESIDENT, CORPORATE DEVELOPMENT

Delivered by Courier & E-Mail

April 25, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheets dated April 20, 2009 and accepted by Bodkin Financial Corporation ("the Borrower") under date of April 23, 2009 (the "**2009 Term Sheet**") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "**2010 Term Sheet**"), as well as numerous supplemental term sheets that followed thereafter (collectively, the "**Term Sheet**").

Acknowledgement

In the Term Sheet, you covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as, your "**Securitization Ratio**"). However, your unaudited interim consolidated financial statements for the fiscal period ended February 28, 2011 disclosed that your Securitization Ratio was 79% as at such date (referred to hereinafter as the "**Securitization Ratio Breach**").

In the Term Sheet, you also covenanted that your ratio of Earnings Before Interest and Taxes to Interest Expense (as defined therein, and hereinafter referred to as, your "**Interest Coverage Ratio**") would be no less than 1.75 to 1. However, your unaudited interim consolidated financial statements for the fiscal period ended February 28, 2011 disclosed that your Interest Coverage Ratio was 1.63 to 1 as at such date (referred to hereinafter as the "**Interest Coverage Ratio Breach**"). The whole of the Securitization Ratio Breach and the Interest Coverage Ratio Breach shall be referred to as the "**Covenant Breaches**".

The Bank of Montreal ("the Bank") has not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet, we do not intend to waive, nor shall we be taken to have waived, any of the Covenant

Breaches (as such term is defined herein) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof.

We ask that the Borrower acknowledge the excesses, as outlined herein, by signing below. Please return the original executed acknowledgement to the Bank at your earliest convenience.

Yours truly,

BANK OF MONTREAL

By: 

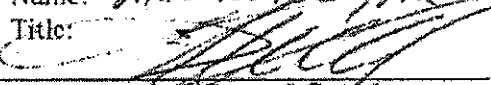
Name: Paul Findlay
Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

Dated this 27th day of April, 2011.

BODKIN FINANCIAL CORPORATION

By: 

Name: PAUL ROYDS, PRESIDENT & CEO
Title: 

Name: JOHN MITCHELL
Title: EXEC. VICE PRESIDENT & CFO

Delivered by Courier & E-Mail

May 12, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheets dated April 20, 2009 and accepted by Bodkin Financial Corporation ("the Borrower") under date of April 23, 2009 (the "2009 Term Sheet") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "2010 Term Sheet"), as well as numerous supplemental term sheets that followed thereafter (collectively, the "Term Sheet").

Acknowledgement

In the Term Sheet, you covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as: your "Securitization Ratio"). However, your unaudited interim consolidated financial statements for the fiscal period ended March 31, 2011 disclosed that your Securitization Ratio was 74% as at such date (referred to hereinafter as the "Securitization Ratio Breach").

The Bank of Montreal ("the Bank") has not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet, we do not intend to waive, nor shall we be taken to have waived, the Securitization Ratio Breach (as such term is defined herein) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof.

We ask that the Borrower acknowledge the breach, as outlined herein, by signing below. Please return the original executed acknowledgement to the Bank at your earliest convenience.

Yours truly,

BANK OF MONTREAL

By: *Paul Findlay*
Name: Paul Findlay
Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

Dated this 13TH day of May, 2011.

BODKIN FINANCIAL CORPORATION

By: *Philip Rogers*
Name: *Philip Rogers*
Title: *President & CEO*

John D. Mitchell
Name: *John D. Mitchell*
Title: *Executive Vice-President & CFO*

Delivered by Courier

June 21, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheets dated April 20, 2009 and accepted by Bodkin Financial Corporation ("the Borrower") under date of April 23, 2009 (the "2009 Term Sheet") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "2010 Term Sheet"), as well as numerous supplemental term sheets that followed thereafter (collectively, the "Term Sheet").

Acknowledgement

In the Term Sheet, you covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as, your "Securitization Ratio"). However, your unaudited interim consolidated financial statements for the fiscal period ended April 30, 2011 disclosed that your Securitization Ratio was 71% as at such date (referred to hereinafter as the "Securitization Ratio Breach").

The Bank of Montreal ("the Bank") has not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet, we do not intend to waive, nor shall we be taken to have waived, the Securitization Ratio Breach (as such term is defined herein) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof.

We ask that the Borrower acknowledge the breach, as outlined herein, by signing below. Please return the original executed acknowledgement to the Bank at your earliest convenience.

Yours truly,

BANK OF MONTREALBy: 

Name: Paul Findlay

Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENTDated this 22nd day of June, 2011.**BODKIN FINANCIAL CORPORATION**By: 

Name: PAUL H. BOYD

Title: PRESIDENT & CEO

Name: 
JOHN D. MITCHELL

Title: EXEC. VICEPRESIDENT & CFO

Delivered by Courier & E-Mail

August 11, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheets dated April 20, 2009 and accepted by Bodkin Financial Corporation ("the Borrower") under date of April 23, 2009 (the "2009 Term Sheet") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "2010 Term Sheet"), as well as numerous supplemental term sheets that followed thereafter (collectively, the "Term Sheet").

Acknowledgement

In the Term Sheet, you covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as, your "Securitization Ratio"). However, your unaudited interim consolidated financial statements for the fiscal period ended June 30, 2011 disclosed that your Securitization Ratio was 61% as at such date (referred to hereinafter as the "Securitization Ratio Breach").

In the Term Sheet, you also covenanted that your ratio of Earnings Before Interest and Taxes to Interest Expense (as defined therein, and hereinafter referred to as, your "Interest Coverage Ratio") would be no less than 1.75 to 1. However, your unaudited interim consolidated financial statements for the fiscal period ended June 30, 2011 disclosed that your Interest Coverage Ratio was 1.68 to 1 as at such date (referred to hereinafter as the "Interest Coverage Ratio Breach"). The whole of the Securitization Ratio Breach and the Interest Coverage Ratio Breach shall be referred to as the "Covenant Breaches".

The Bank of Montreal ("the Bank") has not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet, we do not intend to waive, nor shall we be taken to have waived, any of the Covenant

Breaches (as such term is defined herein) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof.

We ask that the Borrower acknowledge the excesses, as outlined herein, by signing below. Please return the original executed acknowledgement to the Bank at your earliest convenience.

Yours truly,

BANK OF MONTREAL

By: 

Name: Paul Fiedlisy
Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

Dated this 15 day of August, 2011.

BODKIN FINANCIAL CORPORATION

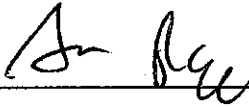
By: 

Name: PAUL RICHARDS
Title: PRESIDENT & CEO

Name: JAMES J. MITCHELL
Title: EXECUTIVE VICE PRESIDENT & CFO

TAB N

**THIS IS EXHIBIT "N" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

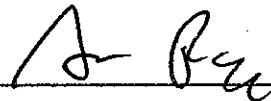
MAXIMUM MARGIN DEFICITS

PERIOD	MAXIMUM MARGIN DEFICIT
2010	
April 5-9	\$2,250,000
April 12-16	\$2,000,000
April 19-23	\$1,000,000
April 26-30	\$500,000
May 18-24	\$1,830,000
May 25-31	\$1,360,000
June 1-7	\$2,800,000
June 8-14	\$2,040,000
June 15-21	\$1,250,000
June 22-28	\$1,325,000
June 29 – July 5	\$2,600,000
July 6-12	\$2,500,000
July 13-19	\$1,900,000
July 20-26	\$1,500,000
July 27 – August 2	\$1,700,000
August 3-9	\$2,850,000
August 10-16	\$2,500,000
August 17-23	\$2,650,000
August 24-30	\$2,300,000
August 31 - September 6	\$2,850,000
September 7-13	\$2,550,000
September 14-20	\$2,150,000
September 21-27	\$2,500,000
September 28 – October 4	\$2,950,000
October 5-11	\$2,750,000
October 12-18	\$2,200,000
October 19-25	\$2,285,000
October 26 – November 1	\$2,100,000
November 2-8	\$2,885,000
November 9-15	\$2,315,000
November 16-22	\$1,700,000
November 23-29	\$1,825,000
November 30 – December 6	\$2,800,000
December 7-13	\$2,350,000
December 14-20	\$1,700,000
December 21-27	\$1,965,000
December 28 – January 3	\$2,025,000

PERIOD	MAXIMUM MARGIN DEFICIT
2011	
January 4-10	\$2,825,000
January 11-17	\$2,300,000
January 18-24	\$1,650,000
January 25-31	\$2,250,000
February 1-7	\$2,850,000
February 8-14	\$2,350,000
February 15-21	\$1,975,000
February 22-28	\$1,935,000
March 1-7	\$2,475,000
March 8-14	\$1,975,000
March 15-21	\$1,650,000
March 22-28	\$1,650,000
March 29 – April 4	\$2,450,000
April 5-11	\$1,950,000
April 12-18	\$1,650,000
April 19-25	\$1,600,000
April 26 – May 2	\$1,550,000
May 3-9	\$2,350,000
May 10-16	\$1,650,000
May 17-23	\$1,600,000
May 24-30	\$1,750,000
May 31 – June 6	\$2,450,000
June 7-13	\$1,950,000
June 14-20	\$1,750,000
June 21-27	\$1,950,000
June 28 – July 4	\$2,850,000
July 5-11	\$2,500,000
July 12-18	\$2,100,000
July 19-25	\$1,400,000
July 26 – August 1	\$2,000,000
August 2-8	\$2,450,000
August 9-15	\$2,060,000
August 16-22	\$1,550,000
August 23-29	\$1,350,000
August 30 – September 5	\$2,600,000
September 6-12	\$2,300,000
September 13-19	\$1,950,000
September 20-26	\$1,950,000
September 27 – October 3	\$2,250,000

TAB 0

**THIS IS EXHIBIT "O" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "S. Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Delivered by e-mail
Original by ordinary mail

June 18, 2010

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our term sheet dated April 20, 2009 and accepted by you under date of April 23, 2009 (the "**2009 Term Sheet**") and our term sheet dated June 1, 2010 and accepted by you under date of June 15, 2010 which supersedes the 2009 Term Sheet (the "**2010 Term Sheet**").

Covenant Breaches

In the 2009 Term Sheet, you covenanted that your ratio of Total Debt to Tangible Net Worth (as each such term was defined therein, and hereinafter referred to as your "**Leverage Ratio**") would not exceed 6.50 to 1. However, as disclosed by your audited, consolidated financial statements for the year ended August 31, 2009 (your "**2009 Financial Statements**"), your Leverage Ratio was 43.32 to 1 as at that date, and your unaudited interim consolidated financial statements for the fiscal periods ended February 28, 2010, March 31, 2010 and April 30, 2010 disclosed that your Leverage Ratio was 13.49 to 1, 12.76 to 1 and 14.27 to 1 as at such dates respectively. It would also appear, in light of the significant year end adjustments that were made in connection with the finalization of your 2009 Financial Statements, that your Leverage Ratio as at the end of each fiscal period from September 30, 2009 to January 31, 2010 inclusive was in fact in excess of 6.50 to 1 notwithstanding that, prior to such adjustments being made, you reported to us that your Leverage Ratio was less than 6.50 to 1 as at each such month end. The foregoing, together with any breach of your Leverage Ratio covenant that may have occurred as disclosed by your unaudited interim consolidated financial statements for the fiscal period ended May 30, 2010 (a copy of which we have yet to receive), are hereinafter collectively referred to as the "**Leverage Ratio Breaches**".

In the 2009 Term Sheet, you also covenanted that your ratio of Earnings Before Interest and Taxes to Interest Expense (as defined therein; and hereinafter referred to as your "**Interest Coverage Ratio**") would be no less than 1.75 to 1. However, as disclosed by



your 2009 Financial Statements, your Interest Coverage Ratio was negative 0.44 to 1 as of that date. Such breach, together with the Leverage Ratio Breaches, are hereinafter collectively referred to as the "Covenant Breaches".

Forbearance

We understand that the principals of your controlling shareholders have been in discussions with various parties, including [REDACTED], for some months with respect to the sale of all of your issued and outstanding shares, which discussions have given rise to that certain letter dated May 31, 2010 addressed to BFG Acquisition Corporation and 3657655 Canada Inc. from [REDACTED] and accepted by BFG Acquisition Corporation and 3657655 Canada Inc. and agreed to by Paul H. Royds, John B. Mitchell, Bill Patton, Raja Singh and Don Bodkin under date of June 2, 2010 (the "[REDACTED] LOI"). In view of the terms of the [REDACTED] LOI, and in particular section 4.6 thereof regarding satisfactory arrangements having been entered into by [REDACTED] with us and with Sun Life Assurance Company of Canada ("Sun Life") as a condition precedent to the entering into of a definitive agreement, we are writing to confirm that, subject always to our right of demand which we may exercise at any time in our sole discretion, our present intention is to forbear from demanding payment of your indebtedness to us and taking steps to enforce or otherwise realize upon our security until a date that is in any event no later than August 31, 2010, provided that (a) you abide by the terms of the 2010 Term Sheet including any margin deficit to which we may agree for any period subsequent to June 28, 2010, (b) [REDACTED] does not terminate the Transaction as defined in and contemplated by the [REDACTED] LOI or by the Definitive Agreement referred to therein, and (c) satisfactory arrangements are entered into by CLE with us and with Sun Life as contemplated by section 4.6 of the [REDACTED] LOI (collectively, the "Provisos"). For greater certainty, paragraphs (b) and (c) above should not be interpreted to mean that it is our present intention to cease forbearing should either of these provisos cease to be true or capable of being complied with, but only that we would then reassess our position in light thereof.

Acknowledgements

In connection with the foregoing, you hereby acknowledge to and agree with us as follows:

- (a) You are indebted to us, on the date hereof, in the aggregate principal amount of \$21,762,768.44 (collectively, the "Advances");
- (b) The Advances, together with all interest accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by you to us under the terms of the 2009 Term Sheet, the 2010 Term Sheet or any of the loan and security agreements and documents (collectively, the "Loan Documents") entered into by you in our favour (collectively, your "Indebtedness"), are unconditionally owing by you to us, and you have no defence, set-off or counterclaim with respect to your Indebtedness. If there is any factual or legal basis whatsoever for any such defence, set-off or

counterclaim, the same is hereby absolutely and unconditionally waived, released and discharged, and we can rely upon this waiver, release and discharge as a full and complete answer to same;

(c) Each of the Loan Documents is a legal, valid and binding obligation enforceable against you and your property in accordance with the respective terms of such Loan Documents, and has not been discharged, varied, waived or altered except pursuant to written amendment agreements entered into between you and us;

(d) We have not waived, and by entering into the 2010 Term Sheet and this letter and by continuing to extend credit to you pursuant to the 2010 Term Sheet we do not intend to waive, nor shall we be taken to have waived, any of the Covenant Breaches or any of our rights and remedies under the Loan Documents and applicable law in respect thereof;

(e) Your Indebtedness is payable to us on demand, which demand we are entitled to make at any time in our sole discretion, whether or not you are then in compliance with the Provisos.

Credit Enquiries

If we are asked to respond to any credit enquiry concerning you made by any other bank, financial institution or other person, we may refuse to respond to such enquiry, and you hereby release and discharge us in respect of any loss, cost or damage that you may suffer as a result of any such refusal to respond.

Affirmation

No changes to any of the Loan Documents are intended or implied by the terms of this letter, and in all respects the provisions of the Loan Documents are hereby specifically ratified and confirmed by you and us as of the date hereof, provided that to the extent of any express conflict between the terms of this letter and the terms of any of the Loan Documents, the terms of this letter shall govern. You acknowledge that we may enforce the Loan Documents and exercise all rights and pursue all rights and remedies with respect to Your Indebtedness to us under the Loan Documents as we may deem appropriate in accordance with the terms of the Loan Documents and applicable law.

Release and Discharge

You acknowledge that no act or omission by us under or with reference to any of the Loan Documents, or any eligible financial contracts or other agreements between us, including this letter (collectively, the "Relationship Documents"), and none of the acts, events or circumstances which resulted in the establishment of any rights and liabilities under any of the Relationship Documents or pertaining to our relationship with you through to the date hereof, have given or will give rise to any claim or cause of action (whether at law or in equity, or pursuant to any statute, regulation or otherwise, and



whether in contract, tort, restitution or otherwise) against us, and in consideration of the agreements herein made by us, which are acknowledged by you to constitute good, valuable and adequate consideration, you agree, on behalf of yourself and your affiliates and your and their respective directors, officers, agents, employees, successors and assigns ("**Releasing Parties**"), to fully release and forever discharge, and do hereby fully release and forever discharge, us and our affiliates and our and their respective directors, officers, agents, employees, successors and assigns ("**Released Parties**"), from all actions, causes of action, claims or demands of any nature or kind whatsoever, whether at law or in equity, or pursuant to any statute, regulation or otherwise, and whether in contract, tort, restitution or otherwise, and whether known or unknown, present or contingent, including any right to consequential or punitive damages, that any of the Releasing Parties now have, may have or have ever had, through to and including the date of this letter, including any claims in connection with any extension of credit, refusal to extend credit, waiver, acquiescence, knowledge of any overdraft situation, or any other act or failure to act on our part in connection with any matter pertaining to any of the Relationship Documents or any aspect of our relationship with you or any dealings between us through to the date hereof. The forgoing release and discharge shall survive the termination of this letter or any judgment invalidating, in whole or in part, this letter or any part thereof, it being our and your express intent that the foregoing release and discharge shall stand on its own as a separate contractual undertaking on your part, supported by independent consideration. The forgoing release and discharge is intended by you and us to waive any requirement of any statute or rule of law to the effect that a release or discharge shall not be construed to extend to unknown claims arising out of or in connection with our relationship with you or any dealings between us through to the date hereof, it being your and our intention that the Releasing Parties and each of them release the Released Parties and each of them of and from any and all claims, known and unknown, arising out of or in connection with our relationship with you or any dealings between us through to the date hereof.

Costs and Expenses

You agree to pay or reimburse us in respect of all reasonable costs and expenses incurred by us, including the reasonable fees and disbursements of our legal counsel in connection with the preparation, negotiation, execution, delivery, administration, interpretation or enforcement of this letter and the other Loan Documents and any agreements delivered in connection with the Transaction contemplated by the [REDACTED] LOI. Such costs and expenses shall be paid by you promptly upon presentation by us to you of a statement in respect thereof, and if the same are not promptly paid by you, we are hereby authorized by you to debit any account maintained by you with us for the amount of such costs and expenses without the necessity of any prior notice to you or any further or other formality.

No Novation

This letter does not discharge or constitute a novation of any debt, obligation, covenant or agreement contained in or arising under any of the Loan Documents but the same shall



remain in full force and effect except to the extent, if any, that the same is modified by the express provisions of this letter.

Enurement

This letter shall be binding upon and enure to the benefit of each of you and us and your and our respective successors and assigns. Any provision of this letter held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this letter. This letter shall only become effective upon the execution and delivery of the Acknowledgement and Agreement appended hereto by you and by each of your guarantors named below, whether by way of facsimile, PDF or otherwise. In this latter regard, this letter and each Acknowledgement and Agreement appended hereto may be executed and delivered in counterparts, each of which shall be considered an original but all of which taken together shall constitute one and the same agreement.

Governing Law

In all respects, including matters of construction, validity and performance, this letter shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada in force in the Province of Ontario. You and we hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and you hereby irrevocably waive, to the fullest extent you may effectively do so, the defence of an inconvenient forum to the maintenance of any such action or proceeding.

Time

Time shall be of the essence in all provisions of this letter.

Interpretation

The division of this letter into paragraphs and the insertion of headings is for convenience of reference only and is not to affect the construction or interpretation of this letter. Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

Would you please acknowledge and signify your acceptance of the terms of this letter, and cause your guarantors named below to also do so, on or prior to June 24, 2010 by the execution and delivery of the Acknowledgements and Agreements appended to this letter.

Yours truly,

BANK OF MONTREAL

A handwritten signature in black ink, appearing to be a stylized 'M' or similar monogram, located at the bottom right of the page.

By: 

Name: Paul Findlay

Title: Senior Manager



ACKNOWLEDGEMENT AND AGREEMENT

The undersigned hereby acknowledges receipt of an executed copy of the annexed letter dated June 18, 2010 addressed to us from Bank of Montreal and, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), acknowledges and agrees with and to the terms and conditions of such letter.

Dated this 24TH day of June, 2010.

BODKIN FINANCIAL CORPORATION

By: 

Name: PRESIDENT & CEO
 Title: PAUL ROYDS

Name:
 Title:

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned guarantor of the present and future indebtedness and liability of Bodkin Financial Corporation ("Bodkin") to Bank of Montreal (the "Bank") hereby acknowledges (a) receipt of an executed copy of the annexed letter dated June 18, 2010 addressed to Bodkin from the Bank, (b) that it will benefit from any accommodation (including any forbearance) extended by the Bank to Bodkin, and (c) its agreement with and to the terms and conditions of such letter.

Dated this 24TH day of June, 2010.

BODKIN LEASING CORPORATION

By: 

Name: PAUL ROYDS
 Title: PRESIDENT & CEO

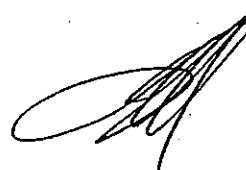
Name:
 Title:

BODKIN CAPITAL CORPORATION

By: 

Name: PAUL ROYDS
 Title: PRESIDENT & CEO

Name:
 Title:



2087241 ONTARIO LIMITED

By: 

Name:

Title:

JOHN MITCHELL
PRESIDENT

Name:

Title:

2087248 ONTARIO LIMITED

By: 

Name:

Title:

PAUL ROYDS
PRESIDENT

Name:

Title:

2087247 ONTARIO LIMITED

By: 

Name:

Title:

BILL PATTON
PRESIDENT

Name:

Title:

BFG INVESTMENT CORPORATION

By: 

Name:

Title:

PAUL ROYDS
PRESIDENT & CEO

Name:

Title:

BFG ACQUISITION CORPORATION

By: 

Name:

Title:

PAUL ROYDS
PRESIDENT & CEO

Name:

Title:



2079343 ONTARIO INC

By Name: Charles Edward Gruchis
Title: PRESIDENT

Name:

Title:

RVS CREDIT CORPORATION

By Name: RAJAR SINGH
Title: PRESIDENT

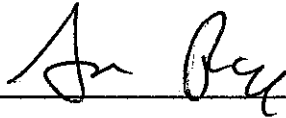
Name:

Title:



TAB P

**THIS IS EXHIBIT "P" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Delivered by e-mail
Original by ordinary mail

August 20, 2010

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our letter to you dated June 18, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of June 20, 2010 (collectively, the **"Forbearance Agreement"**). Capitalized terms used but not otherwise defined herein shall have the same respective meanings as those ascribed thereto in the Forbearance Agreement.

You have advised us that the discussions between you and [REDACTED] in respect of a potential Transaction, as defined in and contemplated by the [REDACTED] LOI, have been terminated, although the possibility remains that [REDACTED] may seek to reopen negotiations with you. As a result, the second Proviso to our agreement to forbear has ceased to be met and the third Proviso to our agreement to forbear will not be met. This has caused us to reassess our position in light thereof, and we are writing to advise you of the terms upon which we are prepared to continue to forbear, subject always to our right to demand payment of your indebtedness and liability to us at any time in our sole discretion.

We understand that you intend to retain PricewaterhouseCoopers Inc. ("PwC") to undertake a process (the **"Sales Process"**) pursuant to which you will seek a sale of all or substantially all of your assets, or a sale of at least a controlling interest in your issued and outstanding voting shares together with a material equity infusion, or some other form of refinancing (each, a **"Transaction"**), which will either enable you to repay in full your indebtedness to us (among others) or will improve your financial position such that we may determine, in our sole discretion and on such terms as we may stipulate, to continue to provide credit facilities and other financial accommodation to you. You have advised us that, with the assistance of Deloitte & Touche Inc., you have prepared a confidential information memorandum to be provided to potentially interested parties who enter into a satisfactory confidentiality, non-use and non-solicitation agreement in your favour, prepared the form of letter to be sent to potentially interested parties to solicit their interest, and assembled, in an electronic data room, all of the documents that you have determined should be material to such a party undertaking its due diligence in respect of a

potential Transaction. Accordingly, subject only to retaining PwC and finalizing, with the advice and input of PwC, the list of parties to whom such letter of solicitation will be sent, you are prepared to immediately commence the Sales Process. We also understand that you have already initiated discussions with a potentially interested party, and as mentioned above [REDACTED] may seek to re-open its negotiations with you, but we hereby confirm your advice to us that neither of these parties, nor any other potentially interested party, will be granted an exclusive right of negotiation (except as part of the Sales Process) and each will be required to participate in the Sales Process if they wish to pursue a potential Transaction.

In these circumstances, we are writing to confirm that, subject always to our right to demand payment of your indebtedness and liability to us at any time in our sole discretion, our present intention is to continue to forbear from making such demand and taking steps to enforce or otherwise realize upon our security until a date that is in any event no later than the earlier of

- (a) the latest date in respect of which we have agreed to continue to extend Facility 1 (as defined in the Term Sheet referred to below) to you with an agreed margin deficit (such date being, on the date hereof, September 20, 2010, subject to further extension in our sole discretion), and
- (b) September 30, 2010, being the date on or before which any offer to complete a Transaction is to be tendered for acceptance by you (should you see fit) in accordance with the Sale Process (such date being subject to extension by us should we choose, in our sole discretion, to continue to provide credit facilities and other financial accommodation to you pending the completion of an accepted Transaction),

provided that

- (i) you abide by the terms of the Term Sheet dated July 2, 2010 and accepted by you under date of July 5, 2010 (as the same may hereafter be amended, supplemented, restated or replaced from time to time, the "Term Sheet") including any margin deficit to which we may agree for any period subsequent to September 20, 2010,
- (ii) the particulars of the Sales Process, including as to the timeline thereof, are acceptable to us,
- (iii) PwC is retained, and the Sales Process is commenced by the delivery to potentially interested parties of the letter to be sent to them outlining the Sales Process and soliciting their interest, by no later than August 27, 2010,
- (iv) you provide to us, as and when requested by us but in any event no less frequently than weekly, confirmation of having paid, on or prior to the due date thereof, all accounts payable and other claims upon you which rank or are capable of ranking in priority to the payment of your indebtedness and liability to us, including without limitation the timely remittance to the Receiver General for Canada of all amounts that are withheld from the remuneration payable to your employees on account of income tax, Canada Pension Plan and employment insurance,

- (v) you provide, and you cause PwC and your legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to any oral or written communication received by you from Canada Revenue Agency or any other governmental authority in respect of any of your outstanding tax or other liabilities to the Queen in right of Canada or any province thereof, and
- (vi) you provide, and you cause your financial and legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to the then status and results of the Sales Process, including the identity of all parties whose interest is initially solicited and of all parties who enter into a confidentiality, non-use and non-solicitation agreement in your favour, the issues (if any) that are raised by any potentially interested party, the material facts of any potential Transaction under discussion with any potentially interested party, and the material provisions of all offers to complete a Transaction that are received by you.

The above paragraphs (i) to (vi) inclusive are collectively referred to as the "Provisos".

The foregoing provisions of this letter shall supercede and replace the provisions of the Forbearance Agreement which appear on page 2 thereof under the heading "Forbearance". In addition, the phrase "the Transaction contemplated by the [REDACTED] LOI" which appears under the heading "Costs and Expenses" on page 4 of the Forbearance Agreement is hereby replaced with "any Transaction". Subject thereto, the terms of the Forbearance Agreement shall remain in full force and effect and are hereby ratified and confirmed.

Would you please acknowledge and signify your acceptance of the terms of this letter, and cause your guarantors named below to also do so, on or prior to August 23, 2010 by the execution and delivery of the Acknowledgements and Agreements appended to this letter.

Yours truly,

BANK OF MONTREAL

By: _____

Name: Paul Findlay

Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned hereby acknowledges receipt of an executed copy of the annexed letter dated August 20, 2010 addressed to us from Bank of Montreal and, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), acknowledges and agrees with and to the terms and conditions of such letter.

Dated this 20th day of August, 2010.

BODKIN FINANCIAL CORPORATION

By: _____

Name: PAUL ROYDS

Title: PRESIDENT & CEO

By: _____

Name: JOHN D. MITCHELL

Title: EXECUTIVE V.P. & CFO

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned guarantor of the present and future indebtedness and liability of Bodkin Financial Corporation ("Bodkin") to Bank of Montreal (the "Bank") hereby acknowledges (a) receipt of an executed copy of the annexed letter dated August 20, 2010 addressed to Bodkin from the Bank, (b) that it will benefit from any accommodation (including any continued forbearance) extended by the Bank to Bodkin, and (c) its agreement with and to the terms and conditions of such letter.

Dated this 20th day of August, 2010.

BODKIN LEASING CORPORATION

By: _____

Name: PAUL ROYDS

Title: PRESIDENT & CEO

By: _____

Name: JOHN D. MITCHELL

Title: EXEC. V.P. & CFO

BODKIN CAPITAL CORPORATION

By: _____

Name: PAUL ROYDS

Title: PRESIDENT & CEO

By: _____

Name: JOHN D. MITCHELL

Title: EXEC. V.P. & CFO

2087241 ONTARIO LIMITED

By: Name: JOHN D. MITCHELL
Title: PRESIDENT

By: _____

Name:
Title:

2087248 ONTARIO LIMITED

By: Name: PAUL ROUDS
Title: PRESIDENT

By: _____

Name:
Title:

2087247 ONTARIO LIMITED

By: Name: BILL PATTON
Title: PRESIDENT

By: _____

Name:
Title:

BFG INVESTMENT CORPORATION

By: Name: PAUL ROUDS
Title: PRESIDENT & CEOBy: Name: JOHN D. MITCHELL
Title: VICE PRESIDENT & CFO

BFG ACQUISITION CORPORATION

By: Name: PAUL ROUDS
Title: PRESIDENT & CEOBy: Name: JOHN D. MITCHELL
Title: VICE PRESIDENT & CFO

2079343 ONTARIO INC.

By: 

Name:

Title:

EMMANUEL EDWARD DANIELSON

PRESIDENT

By:

Name:

Title:

RVS CREDIT CORPORATION

By: 

Name:

Title:

RAKESH KUMAR SINGH

PRESIDENT

By:

Name:

Title:

TAB Q

**THIS IS EXHIBIT "Q" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "A. Rappos", is written over a horizontal line.

SAM PHILIP RAPPOS

A COMMISSIONER FOR TAKING AFFIDAVITS

Delivered by e-mail
Original by ordinary mail

September 29, 2010

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We are writing with reference to our letter to you dated June 18, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of June 20, 2010 (the "Original Forbearance Agreement"), as amended by our letter to you dated August 20, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of August 20, 2010 (the "First Amendment", and the Original Forbearance Agreement as amended by the First Amendment being hereinafter called the "Forbearance Agreement"). Capitalized terms used but not otherwise defined herein shall have the same respective meanings as those ascribed thereto in the Forbearance Agreement.

Although the Sales Process originally contemplated that you and PwC would seek to have any offers to complete a Transaction tendered to you for consideration by September 30, 2010, we understand that to date you have not received any such offer from any interested party, although discussions are continuing with [REDACTED] and a few other parties, and that you do not anticipate receiving any such offer from any such interested party by close of business tomorrow. We further understand that, in light of these ongoing discussions, you and PwC propose to extend the negotiation phase of the Sales Process to perhaps the middle of next month in an ongoing effort to procure an offer to complete a transaction on satisfactory terms, and have asked us to agree to extend the period of our forbearance accordingly.

In these circumstances, we are writing to confirm that, subject always to our right to demand payment of your indebtedness and liability to us at any time in our sole discretion, our present intention is to continue to forbear from making such demand and taking steps to enforce or otherwise realize upon our security until a date that is in any event no later than the earlier of

- (a) the latest date in respect of which we have agreed to continue to extend Facility 1 (as defined in the Term Sheet referred to below) to you with an agreed margin deficit (such date being, on the date hereof, October 18, 2010, subject to further extension in our sole discretion), and

- (b) October 27, 2010 (such date being subject to extension by us should we choose, in our sole discretion, to continue to provide credit facilities and other financial accommodation to you pending the completion of an accepted Transaction),

provided that

- (i) you abide by the terms of the Term Sheet dated September 17, 2010 and accepted by you under date of September 20, 2010 (as the same may hereafter be amended, supplemented, restated or replaced from time to time, the "Term Sheet") including any margin deficit to which we may agree for any period subsequent to October 18, 2010,
- (ii) the particulars of any proposed revisions to the Sales Process, including as to the timeline thereof, are acceptable to us,
- (iii) you continue to retain the services of PwC to assist you in conducting the sales Process,
- (iv) you continue to provide to us, as and when requested by us but in any event no less frequently than weekly, confirmation of having paid, on or prior to the due date thereof, all accounts payable and other claims upon you which rank or are capable of ranking in priority to the payment of your indebtedness and liability to us, including without limitation the timely remittance to the Receiver General for Canada of all amounts that are withheld from the remuneration payable to your employees on account of income tax, Canada Pension Plan and employment insurance,
- (v) you continue to provide, and you continue to cause PwC and your legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to any oral or written communication received by you from Canada Revenue Agency or any other governmental authority in respect of any of your outstanding tax or other liabilities to the Queen in right of Canada or any province thereof, and
- (vi) you continue to provide, and you continue to cause your financial and legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to the then status and results of the Sales Process, including the identity of all parties whose interest is solicited and of all parties who enter into a confidentiality, non-use and non-solicitation agreement in your favour, the issues (if any) that are raised by any potentially interested party, the material facts of any potential Transaction under discussion with any potentially interested party, and the material provisions of all offers to complete a Transaction that are received by you.

The above paragraphs (i) to (vi) inclusive are collectively referred to as the "Provisos".

The foregoing provisions of this letter shall supercede and replace the provisions of the Original Forbearance Agreement which appear on page 2 thereof under the heading "Forbearance", as such provisions were thereafter amended by the First Amendment. Subject thereto, the terms of the Forbearance Agreement shall remain in full force and effect and are hereby ratified and confirmed.

Would you please acknowledge and signify your acceptance of the terms of this letter, and cause your guarantors named below to also do so, on or prior to the close of business tomorrow, September 30, 2010, by the execution and delivery of the Acknowledgements and Agreements appended to this letter.

Yours truly,

BANK OF MONTREAL

By: 

Name: Paul Findlay

Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned hereby acknowledges receipt of an executed copy of the annexed letter dated September 29, 2010 addressed to us from Bank of Montreal and, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), acknowledges and agrees with and to the terms and conditions of such letter.

Dated this 30th day of September, 2010.

BODKIN FINANCIAL CORPORATION

By: 

Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE-PRESIDENT & CFO

By: 

Name: RASKUMAR SINGH
Title: SENIOR V.P., CORPORATE DEVELOPMENT

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned guarantor of the present and future indebtedness and liability of Bodkin Financial Corporation ("Bodkin") to Bank of Montreal (the "Bank") hereby acknowledges (a) receipt of an executed copy of the annexed letter dated September 29, 2010 addressed to Bodkin from the Bank, (b) that it will benefit from any accommodation (including any continued forbearance) extended by the Bank to Bodkin, and (c) its agreement with and to the terms and conditions of such letter.

Dated this 30th day of September, 2010.

BODKIN LEASING CORPORATION

By: 

Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE-PRESIDENT & CFO

By: 

Name: RASKUMAR SINGH
Title: SENIOR V.P., CORPORATE DEVELOPMENT

BODKIN CAPITAL CORPORATION

By: 

Name: JOHN D. MITCHELL
Title: EXECUTIVE VICE-PRESIDENT & CFO

By: 

Name: RASKUMAR SINGH
Title: SENIOR V.P., CORPORATE DEVELOPMENT

2087241 ONTARIO LIMITED

By: Name: JOHN D. MITCHELL
Title: PRESIDENT

By: _____

Name:
Title:

2087248 ONTARIO LIMITED

By: Name: _____
Title: PRESIDENT

By: _____

Name:
Title:

2087247 ONTARIO LIMITED

By: Name: BILL PATTON
Title: PRESIDENT

By: _____

Name:
Title:

BFG INVESTMENT CORPORATION

By: Name: JOHN D. MITCHELL
Title: VICE PRESIDENT & CFOBy: Name: RAJU KUMAR SINGH
Title: VICE PRESIDENT

BFG ACQUISITION CORPORATION

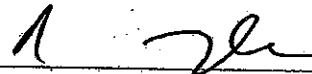
By: Name: JOHN D. MITCHELL
Title: VICE PRESIDENTBy: Name: RAJU KUMAR SINGH
Title: VICE PRESIDENT

2079343 ONTARIO INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

RVS CREDIT CORPORATION

By:  _____
Name: RAJKUMAR SINGH
Title: PRESIDENT

By: _____
Name:
Title:

7079343-ONTARIO INC

By: 

Name:

Title:

CHARLES EDWARD DANIELSON
PRESIDENT

By: _____

Name:

Title:

RVS CREDIT CORPORATION

By: _____

Name:

Title:

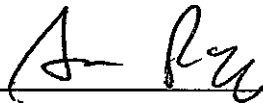
By: _____

Name:

Title:

TAB R

**THIS IS EXHIBIT "R" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in dark ink, appearing to read "S. Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Delivered by e-mail
Original by ordinary mail

January 25, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

Attention: Paul Royds
President & CEO

Dear Sirs:

We refer to our term sheet dated January 17, 2011 and accepted by you under date of January 20, 2011 as well as the numerous previous iterations thereof (collectively, the **"Term Sheet"**). We also refer to our letter to you dated June 18, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of June 20, 2010 (the **"June 2010 Forbearance Letter"**), as amended by our letter to you dated August 20, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of August 20, 2010, and our letter to you dated September 29, 2010, the terms of which were acknowledged and agreed to by you and by each of the guarantors of your indebtedness and liabilities to us under date of September 30, 2010 (collectively hereinafter called the **"Forbearance Agreement"**). Capitalized terms used but not otherwise defined herein shall have the same respective meanings as those ascribed thereto in the Forbearance Agreement.

In the Forbearance Agreement, we confirmed that, subject to our right to demand payment of your indebtedness and liability to us at any time in our sole discretion, and subject to the Provisos being complied with, it was our intention to forbear from making such demand and taking steps to enforce or otherwise realize upon our security until a date that was no later than October 27, 2010 (the **"Forbearance Period"**), such date being subject to extension by us should we choose, in our sole discretion, to continue to provide credit to you. We have not agreed to an extension of the Forbearance Period, and as a result, the Forbearance Period expired on October 27, 2010. As our counsel thereafter advised your counsel, we have been forbearing on a day to day basis since that date.

Covenant Breaches

In the Term Sheet, you covenanted that your ratio of Total Debt to Tangible Net Worth (as each such term was defined therein, and hereinafter referred to as your **"Leverage Ratio"**) would not exceed 5.25 to 1. However, as disclosed by your unaudited interim consolidated financial

statements for the fiscal year ended August 31, 2010 (your "2010 Financial Statements"), your Leverage Ratio was 5.29 to 1 as at that date (hereinafter referred to as your "Leverage Ratio Breach").

In the Term Sheet, you also covenanted that your Tangible Net Worth would at all times be no less than 110% of the outstanding Securitization Proceeds Receivable (as defined therein, and hereinafter referred to as, your "Securitization Ratio"). However, your 2010 Financial Statements and your unaudited interim consolidated financial statements for the fiscal periods ended September 30, 2010 and October 31, 2010 disclosed that your Securitization Ratio was 104%, 100% and 98% as at such dates respectively (collectively referred to hereinafter as the "Securitization Ratio Breaches").

In the Term Sheet, you also covenanted that your ratio of Earnings Before Interest and Taxes to Interest Expense (as defined therein, and hereinafter referred to as, your "Interest Coverage Ratio") would be no less than 1.75 to 1. However, as disclosed by your 2010 Financial Statements, your Interest Coverage Ratio was 0.49 to 1 as of August 31, 2010 (the "Interest Coverage Ratio Breach").

In the Term Sheet, you also covenanted that your margin deficit during the period January 18, 2011 to January 24, 2011 would not exceed the maximum stipulated for such period of \$1,650,000. However, your actual margin deficit exceeded this stipulated amount on January 18, 2011 by \$233,058 and on January 19, 2011 by \$275,981. Such breaches, together with the Leverage Ratio Breach, the Securitization Ratio Breaches and the Interest Coverage Ratio Breach, are hereinafter collectively referred to as the "Covenant Breaches".

Forbearance

We are writing to confirm that, in not entering into a further extension of the Forbearance Period but continuing to advance credit to you since the expiry of the Forbearance Period, we have not waived any of the Covenant Breaches (as such term is defined herein and as defined in the Forbearance Agreement) or other defaults that have occurred, or any of our rights in respect thereof. Additionally, we confirm that, subject always to our right of demand, which we may exercise at any time in our sole discretion, we are prepared to forbear, on a day-to-day basis, from demanding payment of your indebtedness to us and taking steps to enforce on or otherwise realize upon our security, provided that:

- (a) you abide by the terms of the Term Sheet, as the same may hereafter be amended, supplemented, restated or replaced from time to time, including any margin deficit to which we may agree for any period subsequent to January 31, 2011;
- (b) you continue to retain the services of PwC to assist you in completing the purchase by Equirex Leasing Corp. of all of your assets or your issued and outstanding shares as contemplated by that certain letter of intent dated December 15, 2010 executed by Equirex Leasing Corp., BFG Acquisition Corporation and 3657655 Canada Inc.;
- (c) you continue to provide to us, as and when requested by us but in any event no less frequently than weekly, confirmation of having paid, on or prior to the due date thereof,

all accounts payable and other claims upon you which rank or are capable of ranking in priority to the payment of your indebtedness and liability to us, including without limitation the timely remittance to the Receiver General for Canada of all amounts that are withheld from the remuneration payable to your employees on account of income tax, Canada Pension Plan and employment insurance;

- (d) you continue to provide, and you continue to cause PwC and your legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to any oral or written communication received by you from Canada Revenue Agency or any other governmental authority in respect of any of your outstanding tax or other liabilities to the Queen in right of Canada or any province thereof; and
- (e) you provide, and you cause your financial and legal advisors to provide, to us and to our legal counsel, as and when requested by us but in any event no less frequently than weekly, timely periodic updates with respect to the then status and material particulars of your negotiations with Equirex Leasing Corp., including the details of any business or legal issues then under discussion or negotiation and, if requested by us, a copy of the draft agreement of purchase and sale and other documentation then under discussion.

Acknowledgements

In connection with the foregoing, you hereby acknowledge to and agree with us as follows:

- (a) You are indebted to us, as of January 21, 2011, in the aggregate principal amount of \$19,181,043.50, together with all outstanding MasterCard Advances (collectively, the "Advances");
- (b) The Advances, together with all interest accrued and accruing thereon, and all fees, costs, expenses and other charges now or hereafter payable by you to us under the terms of the Term Sheet or any of the loan agreements, guarantees and other documents, including without limitation the Forbearance Agreement (collectively, the "Loan Documents") entered into by you in our favour (collectively, your "Indebtedness"), are unconditionally owing by you to us, and you have no defence, set-off or counterclaim with respect to your Indebtedness. If there is any factual or legal basis whatsoever for any such defence, set-off or counterclaim, the same is hereby absolutely and unconditionally waived, released and discharged, and we can rely upon this waiver, release and discharge as a full and complete answer to same;
- (c) The security documents granted by each of Bodkin Financial Corporation, as borrower, and Bodkin Capital Corporation and Bodkin Leasing Corporation, as guarantors, in favour of the Bank, including without limitation the documents listed on Schedule "A" attached hereto (collectively, the "Security Documents"), shall secure, and continue to secure, all of the respective obligations of Bodkin Financial Corporation, Bodkin Capital Corporation and Bodkin Leasing Corporation to the Bank, present and future, direct or indirect, absolute or contingent, matured or not, whether incurred alone or with any other person, including, without limitation, your obligations under the Term Sheet;

- (d) Each of the Loan Documents and the Security Documents is a legal, valid and binding obligation enforceable against you and your property in accordance with the respective terms of such Loan Documents and Security Documents, and has not been discharged, varied, waived or altered except pursuant to written amendment agreements entered into between you and us;
- (e) We have not waived, and by entering into the Term Sheet and this letter and by continuing to extend credit to you pursuant to the Term Sheet we do not intend to waive, nor shall we be taken to have waived, any of the Covenant Breaches (as such term is defined herein and as defined in the Forbearance Agreement) or any of our rights and remedies under the Loan Documents, the Security Documents and applicable law in respect thereof;
- (f) Your Indebtedness is payable to us on demand, which demand we are entitled to make at any time in our sole discretion; and
- (g) Each of the matters set forth under the heading "Covenant Breaches" herein and under the heading "Covenant Breaches" in the June 2010 Forbearance Agreement are true and correct and are hereby acknowledged by you on and as of the date hereof.

Credit Enquiries

If we are asked to respond to any credit enquiry concerning you made by any other bank, financial institution or other person, we may refuse to respond to such enquiry, and you hereby release and discharge us in respect of any loss, cost or damage that you may suffer as a result of any such refusal to respond.

Affirmation

No changes to any of the Loan Documents are intended or implied by the terms of this letter, and in all respects the provisions of the Loan Documents are hereby specifically ratified and confirmed by you and us as of the date hereof, provided that to the extent of any express conflict between the terms of this letter and the terms of any of the Loan Documents, the terms of this letter shall govern. You acknowledge that we may enforce the Loan Documents and the Security Documents and exercise all rights and pursue all rights and remedies with respect to Your Indebtedness to us under the Loan Documents and the Security Documents as we may deem appropriate in accordance with the terms of the Loan Documents, the Security Documents and applicable law.

Release and Discharge

You acknowledge that no act or omission by us under or with reference to any of the Loan Documents, the Security Documents, or any eligible financial contracts or other agreements between us, including without limitation this letter and the Forbearance Agreement (collectively, the "Relationship Documents"), and none of the acts, events or circumstances which resulted in the establishment of any rights and liabilities under any of the Relationship Documents or pertaining to our relationship with you through to the date hereof, have given or will give rise to

any claim or cause of action (whether at law or in equity, or pursuant to any statute, regulation or otherwise, and whether in contract, tort, restitution or otherwise) against us, and in consideration of the agreements herein made by us, which are acknowledged by you to constitute good, valuable and adequate consideration, you agree, on behalf of yourself and your affiliates and your and their respective directors, officers, agents, employees, successors and assigns ("Releasing Parties"), to fully release and forever discharge, and do hereby fully release and forever discharge, us and our affiliates and our and their respective directors, officers, agents, employees, successors and assigns ("Released Parties"), from all actions, causes of action, claims or demands of any nature or kind whatsoever, whether at law or in equity, or pursuant to any statute, regulation or otherwise, and whether in contract, tort, restitution or otherwise, and whether known or unknown, present or contingent, including any right to consequential or punitive damages, that any of the Releasing Parties now have, may have or have ever had, through to and including the date of this letter, including any claims in connection with any extension of credit, refusal to extend credit, waiver, acquiescence, knowledge of any overdraft situation, or any other act or failure to act on our part in connection with any matter pertaining to any of the Relationship Documents or any aspect of our relationship with you or any dealings between us through to the date hereof. The forgoing release and discharge shall survive the termination of this letter or any judgment invalidating, in whole or in part, this letter or any part thereof, it being our and your express intent that the foregoing release and discharge shall stand on its own as a separate contractual undertaking on your part, supported by independent consideration. The forgoing release and discharge is intended by you and us to waive any requirement of any statute or rule of law to the effect that a release or discharge shall not be construed to extend to unknown claims arising out of or in connection with our relationship with you or any dealings between us through to the date hereof, it being your and our intention that the Releasing Parties and each of them release the Released Parties and each of them of and from any and all claims, known and unknown, arising out of or in connection with our relationship with you or any dealings between us through to the date hereof.

Costs and Expenses

You agree to pay or reimburse us in respect of all reasonable costs and expenses incurred by us, including the reasonable fees and disbursements of our legal counsel in connection with the preparation, negotiation, execution, delivery, administration, interpretation or enforcement of this letter, the other Loan Documents and the Security Documents and any agreements delivered in connection with the Transaction. Such costs and expenses shall be paid by you promptly upon presentation by us to you of a statement in respect thereof, and if the same are not promptly paid by you, we are hereby authorized by you to debit any account maintained by you with us for the amount of such costs and expenses without the necessity of any prior notice to you or any further or other formality.

No Novation

This letter does not discharge or constitute a novation of any debt, obligation, covenant or agreement contained in or arising under any of the Loan Documents or Security Documents but the same shall remain in full force and effect except to the extent, if any, that the same is modified by the express provisions of this letter.

Enurement

This letter shall be binding upon and enure to the benefit of each of you and us and your and our respective successors and assigns. Any provision of this letter held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this letter. This letter shall only become effective upon the execution and delivery of the Acknowledgement and Agreement appended hereto by you and by each of your guarantors named below, whether by way of facsimile, PDF or otherwise. In this latter regard, this letter and each Acknowledgement and Agreement appended hereto may be executed and delivered in counterparts, each of which shall be considered an original but all of which taken together shall constitute one and the same agreement.

Governing Law

In all respects, including matters of construction, validity and performance, this letter shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada in force in the Province of Ontario. You and we hereby irrevocably attorn to the non-exclusive jurisdiction of the Courts of the Province of Ontario and you hereby irrevocably waive, to the fullest extent you may effectively do so, the defence of an inconvenient forum to the maintenance of any such action or proceeding.

Time

Time shall be of the essence in all provisions of this letter.

Interpretation

The division of this letter into paragraphs and the insertion of headings is for convenience of reference only and is not to affect the construction or interpretation of this letter. Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

Would you please acknowledge and signify your acceptance of the terms of this letter, and cause your guarantors named below to also do so, on or prior to the close of business on January 26, 2011, by the execution and delivery of the Acknowledgements and Agreements appended to this letter.

Yours truly,

BANK OF MONTREAL

By: 

Name: Paul Findlay

Title: Senior Manager

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned hereby acknowledges receipt of an executed copy of the annexed letter dated January 25, 2011 addressed to us from Bank of Montreal and, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), acknowledges and agrees with and to the terms and conditions of such letter.

Dated this 26th day of January, 2011.

BODKIN FINANCIAL CORPORATION

By: _____

Name: PAUL ROYDSTitle: PRESIDENT & CEO

By: _____

Name: JOHN MITCHELLTitle: EXEC. VICE-PRESIDENT & CFO**ACKNOWLEDGEMENT AND AGREEMENT**

The undersigned guarantor of the present and future indebtedness and liability of Bodkin Financial Corporation ("Bodkin") to Bank of Montreal (the "Bank") hereby acknowledges (a) receipt of an executed copy of the annexed letter dated January 25, 2011 addressed to Bodkin from the Bank, (b) that it will benefit from any accommodation (including any continued forbearance) extended by the Bank to Bodkin, and (c) its agreement with and to the terms and conditions of such letter.

Dated this 26th day of January, 2011.

BODKIN LEASING CORPORATION

By: _____

Name: PAUL ROYDSTitle: PRESIDENT & CEO

By: _____

Name: JOHN MITCHELLTitle: EXEC. VICE-PRESIDENT & CFO**BODKIN CAPITAL CORPORATION**

By: _____

Name: PAUL ROYDSTitle: PRESIDENT & CEO

By: _____

Name: JOHN MITCHELLTitle: EXEC. VICE-PRESIDENT & CFO

2087241 ONTARIO LIMITED

By: Name: GORDON MITCHELL
Title: PRESIDENT

By: _____

Name: _____
Title: _____

2087248 ONTARIO LIMITED

By: Name: PAUL ROYDS
Title: PRESIDENT

By: _____

Name: _____
Title: _____

2087247 ONTARIO LIMITED

By: Name: WILLIAM PATTON
Title: PRESIDENT

By: _____

Name: _____
Title: _____

BFG INVESTMENT CORPORATION

By: Name: _____
Title: _____By: Name: RAZA SINGH
Title: _____

BFG ACQUISITION CORPORATION

By: Name: _____
Title: _____By: Name: RAZA SINGH
Title: _____

2079343 ONTARIO INC.

By: _____
Name: _____
Title: _____


By: _____
Name: _____
Title: _____

RVS CREDIT CORPORATION

By: *A* *Sh*
Name: *RASA SINGH*
Title: *President*

By: _____
Name: _____
Title: _____

2079343 ONTARIO INC.

By: 
Name: C. E. DANIELSON
Title: PRESIDENT

By: _____
Name: _____
Title: _____

RVS CREDIT CORPORATION

By: _____
Name: _____
Title: _____

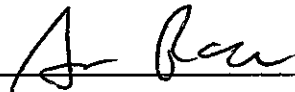
By: _____
Name: _____
Title: _____

SCHEDULE "A"

1. Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Bodkin Financial Corporation ("Financial") in favour of the Bank of Montreal (the "Bank")
2. Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Bodkin Capital Corporation ("Capital") in favour of the Bank
3. Ontario Personal Property Security Act Security Agreement dated May 3, 2004 granted by Bodkin Leasing Corporation ("Leasing") in favour of the Bank
4. Movable Hypothec in the amount of \$35,000,000 dated April 29, 2004 granted by Financial in favour of the Bank
5. Movable Hypothec in the amount of \$35,000,000 dated April 29, 2004 granted by Capital in favour of the Bank
6. Movable Hypothec in the amount of \$35,000,000 dated April 29, 2004 granted by Leasing in favour of the Bank
7. Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Financial in favour of the Bank
8. Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Capital in favour of the Bank
9. Security Agreement Re: Leased Vehicles dated May 3, 2004 granted by Leasing in favour of the Bank
10. Amendment and Acknowledgement Agreement dated December 15, 2005 between the Bank and Financial
11. Acknowledgement and Agreement dated December 15, 2005 granted by Capital and Leasing in favour of the Bank

TAB S

**THIS IS EXHIBIT "S" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in black ink, appearing to read "S. Rappos", is written over a horizontal line.

SAM PHILIP RAPPOS

A COMMISSIONER FOR TAKING AFFIDAVITS

Rappos, Sam

From: Rappos, Sam
Sent: Friday, September 02, 2011 1:51 PM
To: mhorst@CasselsBrock.com; 'MMercier@CasselsBrock.com'; 'CNewman@CasselsBrock.com'
Cc: Zimmerman, Alec
Subject: BMO and Bodkin
Importance: High
Attachments: BFC.pdf; BCC.pdf; BLC.pdf

Gentlemen,

As you know, we are counsel to the Bank of Montreal (the "**Bank**") with respect to matters relating to Bodkin Financial Corporation ("**BFC**") and its affiliated companies, Bodkin Capital Corporation ("**BCC**") and Bodkin Leasing Corporation ("**BLC**"). We write to you in your capacity as counsel to BFC, BCC and BLC (collectively, "**Bodkin**").

Further to our recent correspondence, we understand that you have received instructions from Bodkin to accept service on their behalf of any notices of intention to enforce security ("**NITES**") delivered by the Bank. With respect thereto, please find attached, which we deliver on behalf of the Bank, NITES with respect to BFC, BCC and BLC.

We ask that you please confirm by return e-mail that you have accepted the documents on behalf of Bodkin and that Bodkin agrees to the electronic service of such documents.

We look forward to hearing from you.

Best regards,
 Sam



Sam P. Rappos
 Lawyer, Insolvency & Restructuring
 T 416.367.6033 | F 416.361.7306 | M 416.931.6033 | srappos@blg.com
 Scotia Plaza, 40 King Street West, Toronto, ON, Canada M5H 3Y4

Borden Ladner Gervais LLP | It begins with service
 Calgary | Montréal | Ottawa | Toronto | Vancouver | Waterloo Region
blg.com

Please note that our addresses have changed and now end in blg.com. Please update your address book. You may also have noticed that we have recently changed our logo. This evolution represents our increased commitment to service and achieving the best results for our clients and serves as a constant reminder of our commitment and dedication to professional and service excellence in everything we do.



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This message is intended only for the named recipients. This message may contain information that is privileged, confidential or exempt from disclosure under applicable law. Any dissemination or copying of this message by anyone other than a named recipient is strictly prohibited. If you are not a named recipient or an employee or agent responsible for delivering this message to a named recipient, please notify us immediately, and permanently destroy this message and any copies you may have. Warning: Email may not be secure unless properly encrypted.

10/3/2011

**NOTICE OF INTENTION TO
ENFORCE SECURITY**
(Rule 124)

TO: Bodkin Capital Corporation, an insolvent person¹
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

TAKE NOTICE THAT:

1. Bank of Montreal (the "**Bank**"), a secured creditor, intends to enforce its security on the insolvent person's property described below:

All of the present and after-acquired property of the insolvent person.

2. The security that is to be enforced is in the form of the security described in **Schedule "A"** hereto together with any and all other security of the insolvent person or others now or hereafter held by the Bank.
3. The total amount of indebtedness secured by the security as of August 31, 2011 is \$11,466,684.91, plus all applicable interest, fees and costs to the date of payment.
4. The Bank will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement in the form of consent attached as **Schedule "B"** hereto.

Dated at Toronto, Ontario this 2nd day of September, 2011.

BANK OF MONTREAL

By: _____

Name: Paul Findlay

Title: Senior Account Manager

¹ The term "an insolvent person" is inserted in this form merely to comply with Form 86 and Rule 124(1) of the *Bankruptcy and Insolvency Act*.

SCHEDULE "A"

1. Guarantee dated May 3, 2004
2. Ontario Personal Property Security Act Security Agreement dated May 3, 2004
3. Security Agreement re Leased Vehicles dated May 3, 2004
4. Movable Hypothec dated April 29, 2004
5. Amendment and Acknowledgement Agreement dated December 15, 2005

SCHEDULE "B"

TO: BANK OF MONTREAL

Bodkin Capital Corporation hereby acknowledges receipt of the Notice of Intention to Enforce Security dated September 2, 2011 delivered on behalf of Bank of Montreal and hereby:

- (a) waives the time period provided for therein; and
- (b) consents to the immediate enforcement of Bank of Montreal's security.

DATED at Mississauga, Ontario this _____ day of September, 2011.

BODKIN CAPITAL CORPORATION

Per: _____

Name:

Title:

I am authorized to bind the company.

**NOTICE OF INTENTION TO
ENFORCE SECURITY**
(Rule 124)

TO: Bodkin Leasing Corporation, an insolvent person¹
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

TAKE NOTICE THAT:


1. Bank of Montreal (the "**Bank**"), a secured creditor, intends to enforce its security on the insolvent person's property described below:

All of the present and after-acquired property of the insolvent person.

2. The security that is to be enforced is in the form of the security described in **Schedule "A"** hereto together with any and all other security of the insolvent person or others now or hereafter held by the Bank.
3. The total amount of indebtedness secured by the security as of August 31, 2011 is \$11,466,684.91, plus all applicable interest, fees and costs to the date of payment.
4. The Bank will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement in the form of consent attached as **Schedule "B"** hereto.

Dated at Toronto, Ontario this 2nd day of September, 2011.

BANK OF MONTREAL

By: 
Name: Paul Findlay
Title: Senior Account Manager

¹ The term "an insolvent person" is inserted in this form merely to comply with Form 86 and Rule 124(1) of the *Bankruptcy and Insolvency Act*.

SCHEDULE "A"

1. Guarantee dated May 3, 2004
2. Ontario Personal Property Security Act Security Agreement dated May 3, 2004
3. Security Agreement re Leased Vehicles dated May 3, 2004
4. Movable Hypothec dated April 29, 2004
5. Amendment and Acknowledgement Agreement dated December 15, 2005

SCHEDULE "B"

TO: BANK OF MONTREAL

Bodkin Capital Corporation hereby acknowledges receipt of the Notice of Intention to Enforce Security dated September 2, 2011 delivered on behalf of Bank of Montreal and hereby:

- (a) waives the time period provided for therein; and
- (b) consents to the immediate enforcement of Bank of Montreal's security.

DATED at Mississauga, Ontario this _____ day of September, 2011.

BODKIN LEASING CORPORATION

Per: _____

Name:

Title:

I am authorized to bind the company.

**NOTICE OF INTENTION TO
ENFORCE SECURITY
(Rule 124)**

TO: Bodkin Financial Corporation, an insolvent person¹
2150 Dunwin Drive, Unit #1
Mississauga, Ontario
L5L 5M8

TAKE NOTICE THAT:

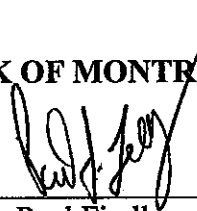
1. Bank of Montreal (the "**Bank**"), a secured creditor, intends to enforce its security on the insolvent person's property described below:

All of the present and after-acquired property of the insolvent person.

2. The security that is to be enforced is in the form of the security described in **Schedule "A"** hereto together with any and all other security of the insolvent person or others now or hereafter held by the Bank.
3. The total amount of indebtedness secured by the security as of August 31, 2011 is \$11,466,684.91, plus all applicable interest, fees and costs to the date of payment.
4. The Bank will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement in the form of consent attached as **Schedule "B"** hereto.

Dated at Toronto, Ontario this 2nd day of September, 2011.

BANK OF MONTREAL

By: 
Name: Paul Findlay
Title: Senior Account Manager

¹ The term "an insolvent person" is inserted in this form merely to comply with Form 86 and Rule 124(1) of the *Bankruptcy and Insolvency Act*.

SCHEDULE "A"

1. Ontario Personal Property Security Act Security Agreement dated May 3, 2004
2. Security Agreement re Leased Vehicles dated May 3, 2004
3. Movable Hypothec dated April 29, 2004
4. Amendment and Acknowledgement Agreement dated December 15, 2005

SCHEDULE "B"

TO: BANK OF MONTREAL

Bodkin Financial Corporation hereby acknowledges receipt of the Notice of Intention to Enforce Security dated September 2, 2011 delivered on behalf of Bank of Montreal and hereby:

- (a) waives the time period provided for therein; and
- (b) consents to the immediate enforcement of Bank of Montreal's security.

DATED at Mississauga, Ontario this _____ day of September, 2011.

BODKIN FINANCIAL CORPORATION

Per: _____

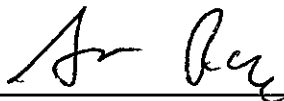
Name:

Title:

I am authorized to bind the company.

TAB T

**THIS IS EXHIBIT "T" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in cursive script, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Rappos, Sam

From: Rappos, Sam
Sent: Monday, October 03, 2011 2:26 PM
To: Horst, Marlin
Cc: Mercier, Marc; Zimmerman, Alec; FINDLAY, PAUL; Julien, Stanley
Subject: RE: Bodkin [IWOV-Legal.FID1038534]
Importance: High
Attachments: BFC Executed Demand Oct 3 2011.pdf; BCC BLC Executed Demand Oct 3 2011.pdf
 Marlin,

Further to the e-mails enclosed below, please find attached: (i) a demand letter dated October 3, 2011 delivered by the Bank of Montreal to Bodkin Financial Corporation, with a copy to Bodkin Capital Corporation and Bodkin Leasing Corporation; and (ii) a demand letter dated October 3, 2011 delivered by Bank of Montreal to Bodkin Capital Corporation and Bodkin Leasing Corporation.

Best regards,
 Sam



Sam P. Rappos
 Lawyer, Insolvency & Restructuring
 T 416.367.6033 | F 416.361.7306 | M 416.931.6033 | srappos@blg.com
 Scotia Plaza, 40 King Street West, Toronto, ON, Canada M5H 3Y4

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blg.com

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From: Horst, Marlin [<mailto:mhorst@casselsbrock.com>]
Sent: Monday, October 03, 2011 10:29 AM
To: Rappos, Sam
Cc: Mercier, Marc; Zimmerman, Alec
Subject: RE: Bodkin [IWOV-Legal.FID1038534]

I have authority to receive on behalf of Bodkin. Thanks.



Marlin Horst
 Direct: 416 860 6446 • Fax: 416 644 9340 • mhorst@casselsbrock.com
 2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2
www.casselsbrock.com

From: Rappos, Sam [<mailto:SRappos@blg.com>]
Sent: Monday, October 03, 2011 10:09 AM

10/3/2011

To: Horst, Marlin
Cc: Mercier, Marc; Zimmerman, Alec
Subject: RE: Bodkin [IWOV-Legal.FID1038534]
Importance: High

Marlin,

Can you please confirm whether you have authorization to accept service on behalf of Bodkin of a demand letter, along with the Bank's receivership application and bankruptcy applications?

Best regards,
Sam



Sam P. Rappos
Lawyer, Insolvency & Restructuring
T 416.367.6033 | F 416.361.7306 | M 416.931.6033 | srappos@blg.com
Scotia Plaza, 40 King Street West, Toronto, ON, Canada M5H 3Y4

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blg.com

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From: Horst, Marlin [<mailto:mhorst@casselsbrock.com>]
Sent: Thursday, September 01, 2011 4:44 PM
To: Zimmerman, Alec; Rappos, Sam
Cc: Newman, Charles; Mercier, Marc
Subject: Bodkin [IWOV-Legal.FID1038534]

Alec/Sam,

As discussed Bodkin has authorized us to accept service of the Section 244 notices on their behalf. As I will be out of the office tomorrow please feel free to have your server serve the documents to Charles Newman (copied on this e-mail). If there are any issues I will be watching my e-mail and will be able to respond.

If you have any questions or comments please do not hesitate to contact me.



Marlin Horst
Direct: 416 860 6446 • Fax: 416 644 9340 • mhorst@casselsbrock.com
2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2
www.casselsbrock.com

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10/3/2011

the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

10/3/2011

Delivered by Courier & E-Mail

October 3, 2011

Bodkin Financial Corporation
2150 Dunwin Drive, Unit #1
Mississauga, ON L5L 5M8

Attention: Mr. Paul Royds, President & CEO

Dear Sirs:

Re: Indebtedness of Bodkin Financial Corporation

We refer to the term sheet dated September 20, 2011 issued by us and accepted by you under date of September 21, 2011 (collectively, the "**Term Sheet**").

According to our records, you are presently indebted or otherwise liable to us under the credit facilities provided for in the Term Sheet in the principal aggregate amount of \$10,354,803.27 as of September 30, 2011, the particulars of which are further set forth in the annexed **Schedule "A"** (the "**Indebtedness**"), all of which is, under the provisions of the Term Sheet and related loan and forbearance documents, repayable by you to us on demand.

We hereby demand the immediate payment by you to us of the Indebtedness in full, together with interest thereon accrued to the date of payment thereof at the rates of interest provided for in the Term Sheet as being applicable to the various components of the Indebtedness, along with all existing and future professional and other fees and costs.

We hereby reserve all of our rights in respect of any further or other indebtedness or liability of any kind or nature owed by you, jointly or severally, to us which may now exist or hereafter be incurred, under or pursuant to the Term Sheet or otherwise.

Yours truly,

BANK OF MONTREAL

By: 

Name: Paul James Findlay
Title: Senior Manager, SAMU

Encl.

CC: Bodkin Capital Corporation and Bodkin Leasing Corporation

SCHEDULE "A"
INDEBTEDNESS OF BODKIN FINANCIAL CORPORATION

Demand Operating Credit Facility

Amount of Facility as at September 20, 2011	Principal Amount Outstanding as at September 30, 2011
\$10,000,000	\$3,573,271.78

Demand Wholesale Leasing Credit Facility

Amount of Facility as at September 20, 2011	Principal Amount Outstanding as at September 30, 2011
\$3,344,497.94	\$3,242,947.97

Demand Heavy Duty Truck and Trailer Leasing Credit Facility

Amount of Facility as at September 20, 2011	Principal Amount Outstanding as at September 30, 2011
\$2,835,752.64	\$2,716,340.07

Demand New Equipment Leasing Credit Facility

Amount of Facility as at September 20, 2011	Principal Amount Outstanding as at September 30, 2011
\$860,927.86	\$821,362.00

Corporate MasterCard Facility

Amount of Facility as at September 20, 2011	Principal Amount Outstanding as at September 30, 2011
\$5,000	\$881.45

The Indebtedness as at any proposed date of payment will also include any interest, fees, commissions, costs, expenses and other amounts that have been incurred by the Bank for the account of the borrower from now to the date of payment as set out in the Term Sheet and any loan, forbearance and security documents held by the Bank.

TOTAL PRINCIPAL INDEBTEDNESS AS OF SEPTEMBER 30, 2011: \$10,354,803.27

TOR01: 4640942: v1

Delivered by Courier & E-Mail

October 3, 2011

Bodkin Capital Corporation
2150 Dunwin Drive, Unit #1
Mississauga, ON L5L 5M8

Bodkin Leasing Corporation
2150 Dunwin Drive, Unit #1
Mississauga, ON L5L 5M8

Attention: Mr. Paul Royds, President & CEO

Dear Sirs:

Re: Indebtedness of Bodkin Financial Corporation (the "Borrower")

We refer to the term sheet dated September 20, 2011 issued by us and accepted by you under date of September 21, 2011 (collectively, the **"Term Sheet"**).

Bodkin Capital Corporation (**"Capital"**) and Bodkin Leasing Corporation (**"Leasing"**) each have delivered a Guarantee for Indebtedness of an Incorporated Company dated May 3, 2004 to the Bank (collectively, the **"Guarantees"**) whereby payment was guaranteed to the Bank of all present and future debts and liabilities direct or indirect or otherwise, now or at any time and from time to time hereafter due or owing to the Bank from or by the Borrower or by any successor corporation of the Borrower and whether incurred by the Borrower alone or jointly with any other corporation, person or persons, or otherwise, including all costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of the sums of money due to the bank from the Borrower were either alone or in conjunction with any other corporation, person or persons, or otherwise held howsoever, or attempting to do so, to the maximum amount of \$35,000,000.

The obligations of Capital and Leasing to the Bank under the Guarantees are secured by, among other things, an Ontario Personal Property Security Act Security Agreement, a Movable Hypothec and a Security Agreement Re: Leased Vehicles granted by each of Capital and Leasing to the Bank.

The Borrower is indebted to the Bank as at September 30, 2011 in the approximate principal amount of \$10,354,803.27 on account of the credit facilities under the Term Sheet, together with all applicable interest, costs, fees and other amounts that have accrued and as they continue to accrue (the **"Indebtedness"**).

On October 3, 2011, the Bank demanded immediate payment of the Indebtedness from the Borrower in writing, and you were provided a copy of such correspondence.

The Bank hereby demands immediate payment of the sum of \$10,354,803.27 together with all applicable interest, costs, fees and expenses accrued to the date of payment.

We hereby reserve all of our rights in respect of any further or other indebtedness or liability of any kind or nature owed by you, jointly or severally, to us which may now exist or hereafter be incurred, under or pursuant to the Term Sheet, the Guarantees or otherwise.

Yours truly,

BANK OF MONTREAL

By: 

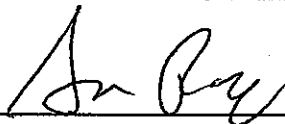
Name: Paul James Findlay

Title: Senior Manager, SAMU

TOR01: 4640997: v1

TAB U

**THIS IS EXHIBIT "U" TO THE
AFFIDAVIT OF PAUL JAMES FINDLAY
SWORN BEFORE ME THIS 3RD
DAY OF OCTOBER, 2011**

A handwritten signature in cursive script, appearing to read "Sam Rappos", is written over a horizontal line.

**SAM PHILIP RAPPOS
A COMMISSIONER FOR TAKING AFFIDAVITS**

Court File No.

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

CONSENT

PricewaterhouseCoopers Inc. hereby consents to act as Court-appointed receiver of the property, assets and undertakings of the Respondents in accordance with an order substantially in the form requested by the Applicant.

October 3, 2011

PRICEWATERHOUSECOOPERS INC.

By: 

Name: Paul van Eyk

Title: Senior Vice President

Court File No.

BANK OF MONTREAL

- and -

**BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL
CORPORATION AND BODKIN LEASING CORPORATION**

Applicant

Respondents

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDINGS COMMENCED AT TORONTO

**CONSENT OF
PRICEWATERHOUSECOOPERS**

BORDEN LADNER GERVASIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario M5H 3Y4

SAM P. RAPPOS
Tel: 416-367-6033
Fax: 416-361-7306
LSUC#: 51399S

H. ALEXANDER ZIMMERMAN
Tel: 416-367-6003
Fax: 416-361-2520
LSUC#: 17663W

Solicitors for the Applicant, Bank of Montreal

TOR01: 4682640: v2

TAB 3

Court File No.

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

THE HONOURABLE

)

FRIDAY, THE 7th

JUSTICE

)

DAY OF OCTOBER, 2011

)

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

BANK OF MONTREAL

Applicant

- and -

**BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant, Bank of Montreal ("**BMO**"), 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 PricewaterhouseCoopers Inc. ("**PwC**") as receiver (in such capacities, the "**Receiver**"), without security, of all of the properties, assets and undertakings of the Respondents, Bodkin Financial Corporation, Bodkin Capital Corporation and Bodkin

Leasing Corporation, acquired for or used in relation to the businesses carried on by the Respondents, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Paul James Findlay sworn October 3, 2011 and the Exhibits thereto, the Report of PwC in its capacity as proposed Receiver dated October 3, 2011, the consent of PwC to act as the Receiver dated October 3, 2011, and on hearing the submissions of counsel for BMO, the Respondents, Sun Life Assurance Company of Canada and PwC in its capacity as proposed Receiver, no other party on the service list appearing although duly served as appears from the affidavit of service of [NAME] sworn October ••, 2011,

SERVICE

1. **THIS COURT ORDERS** that the time for service of BMO's Notice of Application and Application Record dated October 3, 2011 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, PricewaterhouseCoopers Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of each of the Respondents acquired for or used in relation to the businesses carried on by the Respondents, including all proceeds thereof (the "Property").

3. **THIS COURT ORDERS** that the Receiver shall not operate, manage or carry on the businesses of the Respondents, or employ any employees of the Respondents, without further express order of the Court, on notice to the Applicant.

RECEIVER'S POWERS

4. **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, but subject to paragraph 3 hereof, 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 any of the Property to safeguard it, the engaging of independent security personnel, 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 Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to any of the Respondents and to exercise all remedies of any of the Respondents in collecting such monies, including, without limitation, to enforce any security held by any of the Respondents;
- (e) to settle, extend or compromise any indebtedness owing to any of the Respondents;
- (f) 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 any of the Respondents, for any purpose pursuant to this Order;
- (g) 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 any of the Respondents, 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;

- (h) 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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.

- (i) 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;
- (j) 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;
- (k) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (l) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Respondents;

- (m) to exercise any shareholder, partnership, joint venture or other rights which any of the Respondents may have;
- (n) to consent to the issuance of a bankruptcy order for and on behalf of each of the Respondents in respect of the Bankruptcy Applications (as defined below); and
- (o) 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 any of the Respondents, and without interference from any other Person.

5. **THIS COURT ORDERS** that the Receiver is hereby empowered, authorized and directed, subject to retaining such reserves as it may see fit in respect of the payment of the reasonable fees and disbursements of the Receiver and of its counsel as provided for in paragraph 22 hereof, and in respect of the payment of any claim which is secured by a perfected security interest or hypothec in any of the personal or movable Property of any of the Respondents pending a determination as to the priority of such claims against the claims of BMO, to pay to BMO on account of its claims, until such time as all of the claims of BMO shall have been paid in full (including without limitation all accrued and unpaid interest thereon to the date of final payment), all moneys received by the Receiver from any source and at any time or from time to time, and to apply the balance of such funds, if any, in accordance with any further order of this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. **THIS COURT ORDERS** that (i) each of the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their 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.

7. **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 any of the Respondents, 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 7 or in paragraph 8 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.

8. **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.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **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 RESPONDENTS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Respondents or the Property, other than the outstanding applications for bankruptcy orders bearing Court File No. •, Court File No. • and Court File No. • that were commenced by BMO against the Respondents (collectively, the "**Bankruptcy Applications**"), 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 any of the Respondents or the Property, other than the Bankruptcy Applications, are hereby stayed and suspended pending further Order of this Court. BMO may prosecute the Bankruptcy Applications at any time following the completion of the sale of certain of the Property to Equirex Leasing Corp. or its affiliates.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against any of the Respondents, the Receiver, or affecting the Property, other than with respect to the Bankruptcy Applications, 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 to carry on the businesses of the Respondents or to empower any of the Respondents to carry on any business other than the businesses with which they are now engaged, (ii) exempt the Receiver or any of the Respondents from compliance with applicable 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

12. **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 any of the Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Respondents 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 any of the Respondents 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 Respondents' 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 Respondents 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

14. **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

15. **THIS COURT ORDERS AND DIRECTS** that, subject to any further order of this Court as contemplated by paragraph 3 hereof, the Receiver shall not be authorized to retain any of the employees of the Respondents, and shall not be construed to be the employer of any of the said employees by reason of its appointment as Receiver hereunder. 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

16. **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 any of the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **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

18. **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

19. **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, 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 subject to paragraph 20 hereof and sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver's Charge shall be subordinate to any valid and enforceable mechanics', repairers' and storers' lien in favour of any Person properly perfected against a vehicle owned by Bodkin and leased to a third-party.

21. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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.

22. **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 normal 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.

GENERAL

23. **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.

24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Respondents.

25. **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.

26. **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.

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

28. **THIS COURT ORDERS** that the Applicant and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the creditors of any of the Respondents or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic 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.

29. **THIS COURT ORDERS** that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [INSERT WEBSITE ADDRESS].

30. **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.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

BANK OF MONTREAL

- and -

**BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL
CORPORATION AND BODKIN LEASING CORPORATION**

Applicant

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

RECEIVERSHIP ORDER

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Solicitors for the Applicant, Bank of Montreal

TAB 4

January 15, 2010
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE _____) _____ DAY, THE _____ DAY

_____)

JUSTICE _____) OF _____, 20__

PLAINTIFF¹

Plaintiff

THE HONOURABLE _____

)

FRIDAY, THE 7th

JUSTICE _____

)

DAY OF OCTOBER, 2011

)

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1)
OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF
THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

BANK OF MONTREAL

Applicant

- and -

¹ ~~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.~~

DEFENDANT

Defendant

BODKIN FINANCIAL CORPORATION,
BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION

Respondents

RECEIVERSHIP ORDER

THIS MOTION ~~APPLICATION~~² made by the Plaintiff Applicant, Bank of Montreal ("BMO"), 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]~~ PricewaterhouseCoopers Inc. ("PwC") as receiver (in such capacities, the "Receiver"), without security, of all of the properties, assets, and undertakings and ~~properties of [DEBTOR'S NAME] (the "Debtor") of the Respondents, Bodkin Financial Corporation, Bodkin Capital Corporation and Bodkin Leasing Corporation,~~ acquired for, or used in relation to a ~~business~~ the businesses carried on by the ~~Debtor~~ Respondents, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Paul James Findlay sworn ~~[DATE]~~ October 3, 2011 and the Exhibits thereto, the Report of PwC in its capacity as proposed Receiver dated October 3, 2011, the consent of PwC to act as the Receiver dated October 3, 2011, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME] BMO, the Respondents, Sun Life Assurance Company of Canada and PwC in its capacity as proposed Receiver, no other party on the service list appearing~~ although duly served as appears from the affidavit of service of ~~[NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver, [NAME] sworn October 3, 2011,~~

SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~BMO's Notice of Motion and the Motion~~ Application and Application Record dated October 3, 2011 is hereby abridged and

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

validated³ so that this ~~motion~~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, ~~[RECEIVER'S NAME]~~PricewaterhouseCoopers Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of each of the DebtorRespondents acquired for, or used in relation to a ~~business~~the businesses carried on by the DebtorRespondents, including all proceeds thereof (the "Property").

3. THIS COURT ORDERS that the Receiver shall not operate, manage or carry on the businesses of the Respondents, or employ any employees of the Respondents, without further express order of the Court, on notice to the Applicant.

RECEIVER'S POWERS

4. ~~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, but subject to paragraph 3 hereof, 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 ~~of~~ the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of any of the Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and

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.~~

the placement of such insurance coverage as may be necessary or desirable;

~~(e) — 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 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;~~

(d) ~~(f)~~ — to receive and collect all monies and accounts now owed or hereafter owing to any of the Debtor**Respondents** and to exercise all remedies of any of the Debtor**Respondents** in collecting such monies, including, without limitation, to enforce any security held by any of the Debtor**Respondents**;

(e) ~~(g)~~ — to settle, extend or compromise any indebtedness owing to any of the Debtor**Respondents**;

(f) ~~(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 any of the Debtor**Respondents**, for any purpose pursuant to this Order;

~~(i) — to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;~~

(g) ~~(j)~~ 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 any of the Debtor Respondents, 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;

~~(k) 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;~~

(h) ~~(l)~~ 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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,]~~ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(i) ~~(m)~~ 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;

- (j) ~~(n)~~ 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;
- (k) ~~(o)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- ~~(p) 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;~~
- (l) ~~(q)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtor Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtor Respondents;
- (m) ~~(r)~~ to exercise any shareholder, partnership, joint venture or other rights which any of the Debtor Respondents may have;
- (n) to consent to the issuance of a bankruptcy order for and on behalf of each of the Respondents in respect of the Bankruptcy Applications (as defined below); and
- (o) ~~(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 any of the Debtor Respondents, and without interference from any other Person.

5. THIS COURT ORDERS that the Receiver is hereby empowered, authorized and directed, subject to retaining such reserves as it may see fit in respect of the payment of the reasonable fees and disbursements of the Receiver and of its counsel as provided for in

paragraph 22 hereof, and in respect of the payment of any claim which is secured by a perfected security interest or hypothec in any of the personal or movable Property of any of the Respondents pending a determination as to the priority of such claims against the claims of BMO, to pay to BMO on account of its claims, until such time as all of the claims of BMO shall have been paid in full (including without limitation all accrued and unpaid interest thereon to the date of final payment), all moneys received by the Receiver from any source and at any time or from time to time, and to apply the balance of such funds, if any, in accordance with any further order of this Court.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. 4.-**THIS COURT ORDERS** that (i) each of the ~~Debtor~~**Respondents**, (ii) all of its~~their~~ current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its~~their~~ 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.

7. 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 any of the ~~Debtor~~**Respondents**, 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 ~~57~~ or in paragraph ~~68~~ 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.

8. ~~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.

NO PROCEEDINGS AGAINST THE RECEIVER

9. ~~7.~~ **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~~RESPONDENTS OR THE PROPERTY

10. ~~8.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of any of the Debtor or the Property~~Respondents or the Property, other than the outstanding applications for bankruptcy orders bearing Court File No. •, Court File No. • and Court File No. • that were commenced by BMO against the Respondents (collectively, the "Bankruptcy Applications")~~, 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 any of the Debtor~~Respondents~~ or the Property, other than the Bankruptcy Applications, are hereby stayed and suspended pending further Order of this Court. BMO may prosecute the Bankruptcy Applications at any time following the completion of the sale of certain of the Property to Equirex Leasing Corp. or its affiliates.

NO EXERCISE OF RIGHTS OR REMEDIES

11. ~~9.~~ **THIS COURT ORDERS** that all rights and remedies against any of the Debtor~~Respondents~~, the Receiver, or affecting the Property, other than with respect to the Bankruptcy Applications, 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 the businesses of the Respondents or to empower any of the Respondents to carry on any business which the Debtor is not lawfully entitled to carry onother than the businesses with which they are now engaged, (ii) exempt the Receiver or any of the Debtor~~Respondents~~ from compliance with applicable 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

12. ~~10.~~ **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 any of the Debtor**Respondents**, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. ~~11.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with any of the Debtor**Respondents** 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 any of the Debtor**Respondents** 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**Respondents'** 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**Respondents** 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

14. ~~12.~~ **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

15. ~~13. 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.~~ AND DIRECTS that, subject to any further order of this Court as contemplated by paragraph 3 hereof, the Receiver shall not be authorized to retain any of the employees of the Respondents, and shall not be construed to be the employer of any of the said employees by reason of its appointment as Receiver hereunder.

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

16. ~~14. 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 any of the Debtor Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~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

18. ~~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

19. ~~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, 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

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 \$_____ (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.~~

GENERAL

23. 24. ~~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.~~

24. ~~25.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtor Respondents.

25. ~~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 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.

26. ~~27.~~ **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.

27. ~~28.~~ **THIS COURT ORDERS** that the Plaintiff Applicant 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 Applicant's security or, if not so provided by the Plaintiff Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate Respondents' estates with such priority and at such time as this Court may determine.

28. **THIS COURT ORDERS that the Applicant and the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the creditors of any of the Respondents or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic 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.**

29. THIS COURT ORDERS that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at [INSERT WEBSITE ADDRESS].

30. 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 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.

31. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

BANK OF MONTREAL - and -

BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL CORPORATION AND BODKIN LEASING CORPORATION

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

RECEIVERSHIP ORDER

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LSUC#: •

Solicitors for the Applicant, Bank of Montreal

SCHEDULE "A" TOR01: 4524228: v7

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] 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__ (the "Order") made in an action having Court file number ____ CL ____, 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.

- 19 -

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 _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:



Document comparison by Workshare Professional on Monday, October 03, 2011
11:15:07 AM

Input:	
Document 1 ID	PowerDocs://TOR01/4638137/1
Description	TOR01-#4638137-v1- SPR/Precedent/Model_National_Receivership_Order_(as of_January_15,_2010)
Document 2 ID	PowerDocs://TOR01/4524228/7
Description	TOR01-#4524228-v7- BMO/Bodkin/Draft_Receivership_Order
Rendering set	BLG Standard Colour

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Insertions	151
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	293

BANK OF MONTREAL

Applicant

- and -

Court File No.:

**BODKIN FINANCIAL CORPORATION, BODKIN CAPITAL
CORPORATION AND BODKIN LEASING CORPORATION**

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

APPLICATION RECORD

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