

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
**FRASER PAPERS INC./PAPIERS FRASER INC.**,  
FPS CANADA INC., FRASER PAPERS HOLDINGS INC.,  
FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and  
FRASER N.H. LLC (collectively, the Applicants")

Applicants

**MOTION RECORD**  
(Returnable November 3, 2010)

October 28, 2010

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# **TAB 1**

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

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Applicants

**NOTICE OF MOTION**

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on Wednesday, November 3, 2010 at 10:00 o'clock in the morning or as soon thereafter as this motion can be heard at 330 University Avenue, in the City of Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order extending to and including February 28, 2011, or such later date as this Court may order, the stay of proceedings granted under the Order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended (the "Initial Order");

2. an Order authorizing and directing the Applicants to proceed in the preparation of a Plan of Arrangement (the “Plan”) on the basis of substantive consolidation of all Applicants; and
3. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On June 18, 2009, the Applicants filed for and obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), and PricewaterhouseCoopers Inc. was appointed as monitor (the “Monitor”) pursuant to the Initial Order;
2. The Applicants sought and obtained recognition of these proceedings as foreign main proceedings pursuant to Chapter 15 of the *U.S. Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware;
3. The Applicants obtained super-priority interim financing from Brookfield Asset Management Inc. (as amended to Brookfield (US) Corporation) (the “DIP Lender”) to fund the restructuring pursuant to and in accordance with the provisions of the Amended DIP Term Sheet and the DIP Loan Agreement (as such terms are defined in the Initial Order);
4. The Applicants are engaged in discussions with prospective purchasers for the Applicants’ remaining operating mills located in Gorham, New Hampshire and Ashland and Masardis, Maine;

5. The Applicants continue to work closely with the Monitor and the Claims Officer regarding the Proofs of Claim filed, Notices of Disallowance issued and Dispute Notices received, with a view to resolving claims on a consensual basis where possible or proceeding with a final determination if a consensual resolution cannot be reached;
6. The Applicants wish to proceed in the preparation of a Plan for consideration by their creditors, and seek authorization and direction with respect to the basis upon which the Plan is to be prepared;
7. The Applicants, after considering all relevant factors, are of the view that a Plan should include all of the Applicants on a substantive consolidated basis;
8. The Applicants will initiate discussions with their major stakeholders to address any questions or concerns that they may have regarding a substantively consolidated Plan;
9. The stay of proceedings provided by the Initial Order expires on November 5, 2010. The Applicants require an extension of the stay period in order to continue discussions and negotiations with prospective purchasers of the Gorham, Ashland and Masardis mills, to resolve all outstanding claims and to provide the Applicants with the time necessary to prepare a Plan and solicit support among the Applicants' key stakeholders for the approval of such a Plan;
10. The Monitor supports the relief sought by the Applicants;
11. The Applicants are proceeding in good faith and with due diligence;
12. Section 11(4) of the CCAA;

13. Rules 2.03, 3 and 37 of the *Rules of Civil Procedure*, R.R.O. 1994, Reg. 194, as amended; and
14. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Motion:

1. the Affidavit of Glen McMillan sworn October 28, 2010 and the exhibits thereto;
2. the Thirteenth Report of the Monitor, filed separately; and
3. such further and other materials as counsel may advise and this Honourable Court may permit.

October 28, 2010

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IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the "Applicants")

Court File No.: CV-09-8241-00CL

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

Proceedings commenced at **Toronto**

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

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Applicants

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*(Sworn October 28, 2010)*

I, Glen McMillan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Restructuring Officer ("CRO") of Fraser Papers Inc. ("Fraser Papers" or the "Company") and Secretary of the other Applicants, and as such I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and believe it to be true.
2. All monetary amounts referred to in this Affidavit are in United States ("U.S.") currency unless otherwise stated, and all capitalized terms used herein and not otherwise defined are as defined in the Initial Order of Mr. Justice Morawetz dated June 18, 2009, as amended.
3. This Affidavit is made in support of a motion brought by the Applicants for the relief set out in the Notice of Motion dated October 28, 2010. In particular, this Affidavit is sworn in support of the Applicants' request for an Order extending the stay of proceedings granted under

the Initial Order to and including February 28, 2011 and providing authorization and direction in connection with the preparation of a Plan of Arrangement.

4. This Affidavit provides an update as to the status of the Applicants' efforts to sell the remaining assets, the claims being determined pursuant to the claims process, the cash position and drawings under the DIP facility, all outstanding issues in the restructuring, and the framework for a Plan of Arrangement to be presented to the Applicants' creditors (the "Plan").

***A. Remaining Operating Mills***

5. Following the sale of the Applicants' pulp mill in Thurso, Quebec (the "Thurso Mill") and the sale of the Applicants' specialty papers' business (the "SPB Transaction"), the only remaining mill operations are: (i) the paper mill located in Gorham, New Hampshire (the "Gorham Mill") and (ii) the two lumber mills located in Ashland and Masardis, Maine (the "Maine Lumber Mills").

6. There has been little change in the market and business conditions facing the Applicants since their attendance before this Honourable Court on July 7, 2010. Demand for paper products produced at the Gorham Mill has remained stable, albeit at levels that are well below the available supply. The Gorham Mill is a non-integrated facility, meaning that it purchases all of its pulp required for the production of paper from third party suppliers. Pulp prices increased significantly in the early part of 2010 and, while they receded somewhat during the summer, they remain at levels that are high enough that many of the grades of paper that are capable of being produced at the Gorham Mill cannot be manufactured profitably.

7. As a result of these market conditions, the Gorham Mill has taken significant downtime over the past four months. During the period from June to September, the Gorham Mill operated at approximately 58% of its production capacity. In June 2010, prior to the slight decrease in pulp prices, the Gorham Mill was operating at only 40% of its production capacity.

8. Due in large part to the increased cost of purchasing pulp from third parties and the decreased production due to the market downtime taken, the Gorham Mill generated negative EBITDA of \$1.5 million during the period from June to September, 2010.

9. Following the termination on September 29, 2010 of the sale transaction set out in the Original Gorham APA (as defined and discussed in detail below), the Gorham Mill was indefinitely shut down on October 13, 2010 due to market conditions and operating losses incurred in continuing to operate the mill. The Applicants, with the assistance of the Monitor, have conducted a second sales process in an effort to find a going concern purchaser for the Gorham Mill, as discussed in detail later in this Affidavit.

10. As in prior periods, of the Applicants' two Maine Lumber Mills, only one is currently operating. The selling prices for lumber remained steady throughout the course of the summer but at historically low levels. The housing construction market in the U.S. continues to suffer due to the weak U.S. economy and has been at levels below 50% of the record peaks achieved from 2003 to 2005. During the four month period from June to September 2010, the Maine Lumber Mills generated only marginal positive EBITDA in the cumulative amount of \$0.5 million.

11. The Applicants' efforts to conclude a sale transaction for the Maine Lumber Mills are outlined later in this Affidavit.

#### ***B. DIP Financing***

12. DIP financing was made available by each of CIBC Asset-Based Lending Inc. (formerly CIT Business Credit Canada Inc.) ("CIT") pursuant to the CIT DIP Facility and Brookfield U.S. Corporation (formerly through Brookfield Asset Management Inc.) ("BAM" and "BAM US" referred to herein as the "DIP Lender") most recently pursuant to a DIP Loan Agreement approved by the Court on July 7, 2010. In addition, certain post-filing financing was made available under an existing credit facility with Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Business New Brunswick ("GNB").

13. Upon the closing of the SPB Transaction, all pre-filing and post-filing financing from GNB was satisfied by way of a preferred equity interest in the Canadian purchaser, Twin Rivers Paper Company Inc. In addition, the Applicants borrowed approximately \$10 million under the DIP Loan Agreement to repay all cash amounts owing to CIT, thus reducing the CIT DIP

Facility to the principal amount of \$8.0 million, which was utilized by the Applicants to support certain outstanding letters of credit.

14. The CIT DIP Facility was collateralized by the working capital of the Gorham Mill and cash, as required. It was expected that once the Original Gorham APA closed, the Applicants would have insufficient collateral to support the outstanding letters of credit. As such, the Applicants required an alternate means by which to issue letters of credit. Pursuant to the DIP Loan Agreement, the DIP Lender agreed to provide for the issuance of letters of credit in accordance with the terms thereof, which letters of credit were subsequently issued to replace certain letters of credit issued by CIT in the aggregate amount of \$5,183,500 in favour of Old Republic Insurance Company ("Old Republic") and National Union Fire Insurance Co. ("National Union").

15. Pursuant to an Order dated August 12, 2010, the Applicants entered into a settlement agreement (the "Flambeau Settlement Agreement"), the terms of which are discussed in greater detail below, whereby the remaining letters of credit issued by CIT, in the aggregate amount of \$2,722,475 were irrevocably released at the request of the Applicants.

16. With the release of the letters of credit pursuant to the Flambeau Settlement Agreement and the issuance of replacement letters of credit in favour of Old Republic and National Union, the CIT DIP Facility was terminated pursuant to a Commitment Termination Agreement among the Applicants and CIT dated August 24, 2010 and a payout letter dated September 7, 2010. Copies of the Commitment Termination Agreement and the payout letter, respectively, were previously annexed as Exhibits "A" and "C" to an Affidavit I swore on September 24, 2010, filed in support of the Order dated October 1, 2010 amending the Initial Order to delete references to CIT.

17. Pursuant to an Agreement dated June 3, 2010, BAM sold and transferred all commitments under the Amended DIP Term Sheet and the benefit of the DIP Lender's Charge to its U.S. affiliate, BAM US. BAM US incorporated the terms of the Amended DIP Term Sheet, including those with respect to the issuance of letters of credit into a loan agreement (the "DIP Loan Agreement"). The draft DIP Loan Agreement was previously filed with this Honourable Court as Exhibit "B" to an Affidavit I swore on June 30, 2010 (the "June Affidavit") in support

of a motion for an Order approving the DIP Loan Agreement. The final, executed version of the DIP Loan Agreement is annexed hereto and marked as Exhibit "A".

18. By Order dated July 7, 2010, the DIP Loan Agreement was approved by the Canadian Court, and by Order dated July 14, 2010 the Order issued by the Canadian Court was recognized and given effect by the U.S. Court, and by further Order of the U.S. Court dated August 3, 2010, the DIP Loan Agreement was separately approved by the U.S. Court.

19. As of October 22, 2010, the Applicants have borrowed approximately \$11.9 million under the DIP Loan Agreement, consisting of cash borrowings in the amount of \$6.7 million and outstanding letters of credit in the amount of \$5,183,500. Based on the cash flow forecast prepared by the Applicants for the period of the requested stay extension, which is annexed hereto and marked as Exhibit "B" (the "Cash Flow Forecast"), additional borrowings under the DIP Loan Agreement will be required during the period of the requested stay extension.

20. The level of additional borrowings required by the Applicants during the period of the Cash Flow Forecast include certain assumptions particularly as it relates to fees and other costs to be incurred. The Cash Flow Forecast also assumes that the relief sought by the Applicants as it relates to the preparation of a Plan on a substantively consolidated basis, will be granted. In the absence of substantive consolidation of the Applicants for Plan purposes, I believe that the Cash Flow Forecast would have to be re-calculated, as the assumptions for costs and expenses would be materially higher.

21. The DIP Lender has advised me that it is closely monitoring the Applicants' existing borrowings under the DIP Loan Agreement and its anticipated cash requirements to completion of the restructuring (the "Final DIP Requirements"). The Final DIP Requirements will reflect the ongoing costs associated with the Gorham Mill and the Maine Lumber Mills until they are sold, professional fees of the Applicants' Canadian and US counsel, the Monitor and its counsel, and the Claims Officer as well as certain overhead corporate costs. It will also include costs associated with (i) completion of the claims process and resolution of any disputed claims, (ii) preparation and completion of a Plan and the court attendances in Canada and the US that are necessary for the sanctioning, confirmation and implementation of a Plan and (iii) establishing a vehicle to hold and ultimately distribute consideration that may be available under a Plan to the

Applicants' unsecured creditors which, due to the nature of the consideration, cannot be realized upon for several years.

22. The Applicants are working diligently to realize upon all remaining assets and complete all outstanding aspects of the restructuring in as efficient and cost-effective a manner as possible, in an effort to minimize costs and maximize the proceeds of sale of the Applicants' remaining assets, thereby increasing the possibility of the proceeds of sale being sufficient to repay the Final DIP Requirements. This will also require efforts on the part of the Applicants' creditors in the resolution of disputed claims and moving forward in the preparation and implementation of a Plan of Arrangement on an efficient and cost-effective basis.

***C. Changes to Head Office and Management***

23. The Applicants' last attendance before the Court to seek an extension to the stay of proceedings was on July 7, 2010. Since that time, one of the Applicants' four full-time employees was reduced to part-time employment. Effective November 1, 2010, the Applicants will reduce the number of full time employees to two (2), namely myself and Bill Manzer, Senior Vice-President – Business Strategy and Projects of Fraser Papers.

***D. Sale of Specialty Papers Business***

*(i) Post-Closing Matters*

24. All capitalized terms used in this section in describing the SPB Transaction that are not otherwise defined, are as defined in the asset purchase agreement between the Applicants as vendors, and BAM and its Canadian designate Twin Rivers Paper Company Inc., and U.S. designate Twin Rivers Paper Company LLC (collectively "Twin Rivers"), made as of December 22, 2009, as amended (the "SPB Purchase Agreement").

25. A promissory note in the principal amount of \$10 million, representing the Holdback Amount under the SPB Purchase Agreement, continues to be held in escrow during the Holdback Period which is defined as the earlier of: (i) twelve months following the Closing Date (April 28, 2011); or (ii) the date on which the Applicants' Plan is duly approved and sanctioned. Upon termination of the Holdback Period, any portion of the Holdback Amount not payable to the

purchaser will be released and paid to the Monitor in trust for the Applicants' creditors. To date, the Applicants have only been notified of approximately \$150,000 in claims by the purchaser that could potentially impact the Applicants' entitlement to receive the Holdback Amount.

26. Section 3.8 of the SPB Purchase Agreement provides for a post-closing purchase price adjustment in favour of either the Applicants or Twin Rivers based on a Net Working Capital Adjustment as at the Closing Date. On Closing, Fraser Papers delivered to Twin Rivers the Closing Date Estimated Balance Sheet for the purpose of calculating the Purchase Price adjustment. The (final) Closing Date Balance Sheet was to be prepared by Fraser Papers and provided to Twin Rivers no later than sixty (60) days after Closing, on June 28, 2010. The June Affidavit confirmed that, as the Applicants had not yet completed the financial statements for the period ending April 30, 2010, the Applicants and Twin Rivers agreed to extend the period for providing the Closing Date Balance Sheet for an additional thirty (30) days, to July 28, 2010.

27. The Applicants prepared and provided the Closing Date Balance Sheet to Twin Rivers on July 27, 2010, and to the Monitor on or about August 6, 2010. A review by the Monitor revealed a calculation error in the Closing Date Balance Sheet which was acknowledged and agreed between the Applicants and Twin Rivers. Discussions among the Monitor, the Applicants and Twin Rivers regarding the Closing Date Balance Sheet are continuing at the time of swearing this Affidavit, as two issues remain unresolved.

28. The first issue relates to the quantum of prepaid purchases of raw materials ("Prepays") at the time of closing the SPB Purchase Agreement, relative to the Purchase Price Adjustment. The following provides some context for that issue.

29. Since the time of the Initial Order, each of the Applicants has had difficulty in obtaining trade credit from many of their suppliers. Many trade suppliers of the Applicants have demanded that the Applicants pay for their purchases in advance of receiving the goods. In addition, certain suppliers who were prepared to provide credit to the Applicants, particularly wood suppliers, removed those credit terms and demanded pre-payment ahead of critical dates including court dates and the Closing Date of the SPB Purchase Agreement. Any payment in advance of receiving the goods has been treated as an asset in the books and records of the Applicants in accordance with generally accepted accounting principles. In my view, such

payments are in the Ordinary Course of business (as defined under the SPB Purchase Agreement) and the Applicants were obligated to operate in the Ordinary Course under the SPB Purchase Agreement approved by the Court.

30. The amount of Prepays outstanding at any point in time fluctuates as goods are received (at which point the Prepaid is converted to raw material inventory) and additional payments are made. From the period July, 2009 to April, 2010, the month-end balance of Prepays relating to the SPB fluctuated between \$1.1 million and \$1.9 million. The only exception since the commencement of the Applicants' CCAA proceeding was in December, 2009 when the balance was \$0.4 million as a result of the East Papers Operations taking downtime over the Christmas holidays.

31. The outstanding Prepays in the Closing Date Estimated Balance Sheet provided to the Purchaser on April 27, 2010 for Closing was \$1.4 million. The outstanding Prepays in the (final) Closing Date Balance Sheet provided to the Purchaser on July 27, 2010 was \$1.4 million. I understand that the Monitor is reviewing the Prepays as at the Closing Date, and considering whether they should be considered Net Working Capital for the purpose of determining the Purchase Price Adjustment. Pursuant to the SPB Purchase Agreement only Qualifying Accounts Receivable, Inventory and Assumed Liabilities are considered for the purpose of calculating Net Working Capital, and Prepays would not appear to fit within any of these terms.

32. The second issue on the Closing Date Balance Sheet that is being reviewed by the Monitor is the level of payments made to suppliers at the time of closing the SPB Purchase Agreement.

33. The SPB operations prepare cheques for trade creditors every Tuesday. The cheques are prepared to cover invoices from the previous Sunday through to the following Saturday. However, on the last Tuesday of every fiscal month, cheques are prepared to the period from the prior Sunday through to the following Wednesday. This is because the Applicants' financial systems are not available to prepare cheques the first few days of every fiscal month. Since the time of the Initial Order, cheques are mailed on the day they are printed.

34. On Tuesday, April 27, 2010, the Applicants prepared cheques for issuance in respect of the SPB operations and sent them that same day to trade creditors. These cheques were intended to pay for amounts due or coming due between April 25, 2010 and May 5, 2010. In preparing the Closing Date Balance Sheet, I determined that approximately \$600,000 of cheques issued on April 27, 2010 related to amounts that became due after May 5, 2010. This amount was confirmed and repaid by Twin Rivers to the Applicants.

35. The procedures that the Applicants follow to prepare and mail cheques to trade creditors was in the Ordinary Course (as defined under the SPB Purchase Agreement) and the Applicants were obligated to operate in the Ordinary Course under the SPB Purchase Agreement approved by the Court.

36. Based on the Closing Date Balance Sheet, an increase in the purchase price of the SPB Transaction in favour of the Applicants is payable and will result in the issuance of an additional \$4.1 million in unsecured promissory notes of Twin Rivers Paper Company Inc., subject to any changes arising from resolution of the two items noted above. As the promissory notes issued by Twin Rivers Paper Company Inc. to the Applicants on closing were in the amounts of \$30 million and \$10 million, a replacement promissory note for the \$30 million note will be obtained from Twin Rivers Paper Company Inc. to reflect the adjusted purchase price based on the Closing Date Balance Sheet, once the issues identified above are resolved. At that time, the Applicants will coordinate the delivery of a replacement promissory note in exchange for a return of the original \$30 million promissory note delivered on Closing.

*(ii) Terms Negotiated with Employee / Retiree Groups*

37. The Term Sheets executed by the Applicants in respect of the New Brunswick Pension Plan for Hourly Employees (the “NB Hourly Plan”) and the New Brunswick Pension Plan for Salaried Employees (the “NB Salaried Plan”) each contemplate the establishment of a Pension Deficit Funding Trust (or “Outside Trust”) to hold any consideration distributed by the Applicants under a Plan, until such time as it could be converted to cash and contributed to the NB Hourly Plan and NB Salaried Plan. The status of these arrangements are described in greater detail below, in addressing the various pension plans.

38. The Applicants sought final court approval of the SPB Transaction on April 6, 2010. A negotiated arrangement was reached with representative counsel for the Quebec salaried retirees during the court hearing on that date, whereby the Applicants agreed to purchase annuities in place of life insurance benefits for that group of retirees. The Applicants have communicated the terms of such annuities to the affected parties and representative counsel. The Company is awaiting an invoice from the life insurance company which has underwritten the policies and will pay it as soon as it is received. The invoice is expected to be in the amount of \$1.1 million, and this disbursement is reflected in the Cash Flow Forecast.

*(iii) Assumed Liabilities*

39. Pursuant to the SPB Purchase Agreement, all property tax liabilities relating to the Applicants' specialty papers business were assumed by Twin Rivers. In the June Affidavit, I advised that as at June 28, 2010, \$5.6 million and CDN\$3.0 million of property taxes assumed by Twin Rivers had been paid. I have been advised by Wayne Johnson, Vice President for Twin Rivers, that the remaining CDN\$2.8 million in property taxes owed by August 31, 2010 has been paid in accordance with arrangements reached by Twin Rivers with the relevant municipalities.

*(iv) Status of Transitional Agreements Relating to Specialty Papers Business*

40. The Applicants and Twin Rivers continue to provide services under certain transitional services agreements although the closure of the Gorham Mill on October 13, 2010 has eliminated the need for many of these services, including support of their sales and production information systems, transportation planning and payroll systems. Twin Rivers is continuing to provide support for accounts receivable collection and certain information technology functions. Once the Gorham Mill is sold or permanently closed for liquidation, these services will no longer be required.

41. Twin Rivers is also providing certain transitional services to the Applicants in order for the Applicants to maintain their accounting systems and to meet the Applicants' statutory reporting obligations at minimal cost. These services are being performed by Twin Rivers for a nominal fee.

42. The Applicants, specifically Fraser Timber Limited, are providing transitional services to the lumber operations of Twin Rivers pursuant to certain transitional services agreements negotiated in connection with the SPB Transaction. I am advised by Wayne Johnson, Vice-President for Twin Rivers, and do verily believe that Twin Rivers is in the process of implementing a new information system for its lumber operations, which will eliminate the need for Fraser Timber Limited to provide ongoing information technology support.

43. Over the course of the next two months it is expected that transitional services provided to Twin Rivers will be reduced to financial accounting support services and lumber sales support services only.

*E. Sale of Thurso Mill*

44. All capitalized terms used in this section in describing the sale of the Thurso Mill that are not otherwise defined, are as defined in the agreement of purchase and sale between the Applicants and Fortress Specialty Cellulose Inc. ("Fortress") dated March 18, 2010 (the "Thurso Purchase Agreement"). The sale transaction contemplated in the Thurso Purchase Agreement closed on April 30, 2010.

45. The Thurso Purchase Agreement provided for an adjustment to the purchase price in the amount of CDN\$175,000 (the "Thurso Escrow Amount") to be held by the Monitor. The adjustment would be payable to Fortress if it entered into an agreement with Hydro Quebec based on criteria outlined in the Thurso Purchase Agreement. The adjustment would be payable to Fraser Papers if an agreement was not entered into upon those terms. On May 5, 2010 Fortress entered into an agreement with Hydro Quebec, however, the Applicants and Fortress disagreed as to whether the agreement met the criteria outlined in the Thurso Purchase Agreement.

46. A motion to resolve this dispute was heard on August 25, 2010 and pursuant to the Order of this Honourable Court of that same date, the Monitor was ordered and directed to deliver the Thurso Escrow Amount to Fraser Papers (the "Thurso Escrow Order"). The costs of the motion were agreed to as between Fraser Papers and Fortress, and Fraser Papers received payment of the agreed costs from Fortress.

47. The Monitor paid the Thurso Escrow Amount to Fraser Papers pursuant to the Thurso Escrow Order on September 8, 2010.

48. The Thurso Purchase Agreement contemplated the transfer of certain licenses and permits to Fortress, some of which required consents of third parties following closing. The Applicants have been working with Fortress since the Closing Date to ensure that all necessary transfers have been completed. The Thurso Purchase Agreement provided that all costs incurred by the Applicants in obtaining consents or taking similar steps on behalf of Fortress would be payable by Fortress. The Applicants are preparing an account to deliver to Fortress with a request for payment in accordance with the Thurso Purchase Agreement. Upon payment of that account there will be no outstanding post-closing issues in connection with the Thurso Purchase Agreement.

#### *F. Termination of Pension Plans*

##### *(i) New Brunswick Pension Plans*

49. Pursuant to an Order issued by the New Brunswick Superintendent of Pensions (the “NB Superintendent”), the Pension Plan for Salaried Employees and the Pension Plan for Hourly Employees (collectively, the “NB Plans”) were terminated effective April 27, 2010. Morneau Sobeco was appointed as Administrator of each of the NB Plans by the NB Superintendent on March 10, 2010.

50. Due to the funded status of the NB Plans and the deficits existing in the plans, pension benefits payable from the NB Plans were reduced to 69% effective May 1, 2010. These reductions had been contemplated by the Term Sheets negotiated by the Applicants, the NB Superintendent and the representative counsel for the beneficiaries of the NB Plans, which were previously filed with the Court in connection with the SPB Transaction. The reductions took into account the consideration payable under the SPB Transaction, thereby mitigating the more severe reduction that would have otherwise been experienced by retirees receiving a pension.

51. As outlined above, an Outside Trust was established for the NB hourly plan and is in the final stages of being established for the NB salaried plan pursuant to the Term Sheets negotiated with the beneficiaries of the NB Plans as part of the SPB Transaction. A Plan Administrator

Acknowledgement Agreement is being negotiated among the Trustees for each of the Outside Trusts, Morneau Sobeco as Administrator of the NB Plans, and the NB Superintendent. The business terms of that agreement have been approved by Morneau Sobeco and the NB Superintendent. We are awaiting confirmation from the Trustees of the Outside Trusts as to the terms of the Plan Administrator Acknowledgement Agreement. The Applicants are not a party to this Agreement.

*(ii) U.S. Pension Plan*

52. The terms upon which the pension plan for U.S. employees and retirees (the "US Plan") would be wound up and taken over by the Pension Benefit Guaranty Corporation ("PBGC") were negotiated by the Applicants with PBGC. Pursuant to a Notice of Determination issued by PBGC terminating the Plan and appointing the PBGC as the Trustee, and the execution of an Agreement for the Appointment of the Trustee and Termination of Plan by the Applicants on August 26, 2010, the US Plan was terminated effective April 28, 2010 and assumed by PBGC effective August 31, 2010.

53. PBGC has filed an unsecured Proof of Claim in the amount of approximately \$112 million, which has been accepted by the Applicants and the Monitor.

*(iii) Quebec Pension Plans*

54. The Applicants had engaged in efforts over the course of several months to negotiate an arrangement with the Régie des Rentes du Quebec ("Régie") with respect to the pension plans registered in the Province of Quebec for the hourly and salaried employees (collectively, the "Quebec Plans"). Those efforts included a consensus pension proposal submitted to the Régie by the Applicants, authorized representative for the beneficiaries of the Quebec hourly plan, and court-appointed representative counsel for the Quebec salaried plan. The terms of the consensus pension proposal were outlined in an Affidavit sworn by Peter Gordon on March 30, 2010, that was previously filed in this proceeding.

55. In essence, the consensus pension proposal outlined the means by which the negative impact of a termination of the Quebec Plans could be mitigated, for the benefit of the plan beneficiaries. This included a longer period for the final wind-up of the Quebec Plans, similar to

the mechanism employed for the NB Plans, or financial assistance from the Province of Quebec in the form of a guarantee of funded status of the Quebec Plans on certain terms. A number of aspects of the consensus proposal were rejected by the Régie. The Régie advised by letter dated July 8, 2010, that the Minister has indicated that only the Bill 1 arrangements (extended to the Nortel retirees) would apply to retirees in the Quebec Plans.

56. On July 12, 2010 the Applicants received notice from counsel to the Régie that the Quebec Plans were to be terminated immediately, but in no event later than July 16, 2010. After further discussions between the Applicants and the Régie, the Quebec Plans were ultimately terminated as required on July 23, 2010 and the Applicants provided notice to the Quebec Plans and the Quebec Plans' pension committees of the termination.

57. The Applicants provided the Quebec Plans' pension committees with a draft letter to send to the Régie to request the Régie's approval to continue making pension payments to current retirees from the Quebec Plans. The Régie permitted the August pension payments to be made without reduction, but pursuant to a Decision dated August 16, 2010 required the pension committees to reduce pensions in pay to 60% effective with the September, 2010 pension payments.

58. The Régie subsequently required the Applicants to revise the effective date of the termination of the Quebec Plans to April 30, 2010. The Régie and the Applicants discussed amending the date of termination of the Quebec Plans and the sending of an amended notice of termination by the most efficient and cost-effective fashion as deemed by the pension committees and the Applicants. On that basis, the Applicants and the Monitor agreed to lift the stay and to consent to an Order requiring an amended notice of termination reflecting a termination date of April 30, 2010. The Applicants are working with the pension committees to determine the most efficient and cost-effective fashion to provide plan members with the required amended notice.

#### ***G. Flambeau Settlement Agreement***

59. All capitalized terms used in this section that are not otherwise defined, are as defined in the Flambeau Settlement Agreement between Fraser Papers Limited ("Fraser US") and Fraser

Papers on the one hand, and Flambeau River Papers LLC (“Flambeau”) and Park Falls Operator LLC (“Park Falls”) on the other, dated August 25, 2010.

60. Details of the Flambeau transaction are outlined in an Affidavit I swore on July 30, 2010 in support of an approval Order issued by Justice Morawetz on August 12, 2010. Copies of all documents were annexed as exhibits to my earlier Affidavit. For ease of reference the material terms of the transaction are outlined below.

61. Fraser US had posted certain letters of credit with the Wisconsin Department of Natural Resources (the “WDNR”) (the “WDNR LCs”) in the aggregate amount of \$2,722,475 to secure its long term care obligations for Landfills located in the Town of Eisenstein, Price County, Wisconsin. The WDNR LCs had been issued by CIT at the request of the Applicants, and represented a portion of the outstanding obligations to CIT.

62. Approximately four years ago, pursuant to an Asset Sale Agreement dated June 22, 2006 (the “Flambeau Sale Agreement”), Flambeau, a Wisconsin limited liability company, had purchased a Boiler from Fraser US. To secure payment under the Flambeau Sale Agreement, Fraser US was granted a security interest in the Boiler. Approximately \$2.4 million remained outstanding and payable to Fraser US under the terms of the Flambeau Sale Agreement, with additional consideration payable in the event that Flambeau met certain profitability benchmarks in the years 2011-2014.

63. Pursuant to the Flambeau Settlement Agreement, the Applicants, the WDNR, Flambeau and its wholly-owned subsidiary, Park Falls, a Wisconsin limited liability company, agreed that Park Falls would assume all of the obligations and liability of Fraser US with respect to the long-term care of the Landfills pursuant to an assumption agreement (the “Park Falls Assumption Agreement”). Flambeau would also post letters of credit in an amount satisfactory to the WDNR, such that WDNR would irrevocably release the WDNR LCs.

64. Finally, Flambeau and Park Falls agreed to provide a release and indemnity to the Applicants for all liability arising from the Applicants’ obligations under the Landfills’ long-term care licenses from their respective effective dates (the “Flambeau/Parks Falls Release and Indemnity”).

65. In exchange for assuming the obligations of Fraser US pursuant to the Park Falls Assumption Agreement and the Flambeau/Park Falls Release and Indemnity, Fraser US agreed to release its security interest in the Boiler and forego outstanding payments in the amount of approximately \$2.4 million and any additional consideration that could become due under the Flambeau Sale Agreement.

66. The Applicants brought a motion before this Honourable Court on August 12, 2010 seeking approval of the Flambeau Settlement Agreement and all ancillary documents related thereto. Pursuant to an Order of Justice Morawetz dated August 12, 2010 the Flambeau Settlement Agreement was approved, all security interests of Fraser US and any party claiming through Fraser US in the Boiler were immediately and irrevocably discharged and Fraser US and Fraser Papers, among others, were released from any and all claims, damages and liabilities arising out of or relating to the Landfills from and after the Closing Date.

67. The transaction contemplated in the Flambeau Settlement Agreement closed on August 25, 2010. The WDNR LCs were released by WDNR, such that the Applicants' obligations to CIT were immediately reduced by \$2,722,475.

#### *H. Status of Claims Process*

68. The Applicants and their counsel continue to work closely with the Monitor in reviewing the Proofs of Claim filed, the Notices of Disallowance issued and the Dispute Notices received with a view to resolving claims on a consensual basis where possible, or moving to a determination. The total number of claims filed with the Monitor is 1,202 (representing approximately \$1.4 billion) of which 1,005 claims (representing approximately \$394 million) were allowed by the Monitor. Allowed claims in the aggregate amount of approximately \$60 million were subsequently withdrawn or disallowed, as a result of obligations being assumed by purchasers pursuant to sale transactions undertaken by the Applicants. Accordingly, the remaining allowed claims against the Applicants have an aggregate value of approximately \$334 million.

69. The allowed claims include "placeholder" claims filed in respect of the various pension plans, which are subject to final valuation reports being obtained to confirm the amount of the

actual deficit in each plan. As referenced in paragraph 57 of the Monitor's 12<sup>th</sup> Report to the Court, these numbers represent third party claims, and do not include inter-company claims among the various Applicants.

70. As at the date of this Affidavit, there are 13 pending Dispute Notices relating to Claims that have been disallowed, whether wholly or in part, in the total aggregate amount of \$75,735,386 million. In addition, 4 Claims in respect of the Applicants' employees' non-pension post-retirement employee retirement plans ("OPEBs") and supplemental employee retirement plans ("SERPs") totally \$150.7 million in the aggregate, remain to be resolved. The Applicants and their counsel are working diligently to resolve these Claims, which represent a substantial portion of the total aggregate amount of Claims remaining to be determined.

71. If all claims are not finally determined at the time the Applicants are ready to present a Plan to their creditors, the Applicants will discuss with the Monitor and the Claims Officer, whether to issue Revised Notices of Disallowance or Revision for the purpose of admitting some portion of a claim for voting purposes only (but not for distribution), to permit those creditors to exercise a vote on the Plan.

*(i) Claims to be Determined by Motion*

72. Certain Claims may be the subject of motions before this Honourable Court, on the basis of the size of the Claim or the likelihood of any appeal resulting from a determination made by the Claims Officer. The only Claim that currently falls into this category is the restructuring claim filed by MGP Papier ("MGP") for damages allegedly arising out of the repudiation of the contract in the amount of \$26.7 million. The Applicants' counsel, ThorntonGroutFinnigan LLP ("TGF"), is currently engaged in discussions with counsel for MGP to determine the most efficient and cost-effective means of having this dispute resolved.

*(ii) Claims with the Claims Officer*

73. Pursuant to an Order dated July 7, 2010, Andrew Diamond of ADR Chambers was appointed as Claims Officer in addition to the Honourable John D. Ground. I am advised by Ms. Miller that a number of disputed Claims have been referred to Mr. Diamond and that he has engaged both Applicants' counsel and counsel for the various claimants in establishing a

timetable for the submission of materials for a final determination of the Claims. The Applicants recognize that it is not in the best interest of creditors that the Applicants expend cash resources on time-consuming disputes to obtain resolution or engage in protracted court proceedings. As such, the Applicants are working diligently with the Claims Officer to set an aggressive and efficient timetable and process for the resolution of all disputed Claims.

*(iii) Employee-Related Claims*

74. Thirty-two claims were filed with respect to termination of employment in the U.S. with sixteen being filed against each of Fraser Papers Inc. and Fraser Timber Limited (collectively, the “WARN Act and the Maine Severance Act Claims”). Of the thirty two claims filed, two are filed with respect to a class action lawsuit commenced in the United States Court (District of Maine) against these two entities and the remaining thirty claims were filed by individual claimants. The claimants claim that they were terminated without cause as part of, or as the result of, mass layoff or plant closings undertaken by the Applicants on or about January 2, 2009 and that they were not provided with advance written notice of their termination as required by the Worker Adjustment and Retraining Notification Act (the “WARN Act”), 29 U.S.C. 2101 et seq. and 26 M.S.R. & 625-B (the “Maine Severance Act”).

75. The WARN Act and the Maine Severance Act Claims were referred to the Claims Officer. After receipt of the parties’ evidence and submissions in respect of these claims, the Claims Officer considered and determined that an oral hearing would not be necessary. The claimants have since withdrawn the WARN Act portion of these claims upon being satisfied that the Applicants’ position was correct. The Claims Officer rendered his decision with respect to the remaining Maine Severance Act Claims on October 27, 2010. The Claims Officer upheld the Monitor’s disallowance of these 32 Claims.

76. The court-appointed representative counsel for the employees and retirees (“Davies”) filed two claims with respect to OPEBs, one on behalf of all applicable U.S. former employees they represent in the amount of U.S. \$59,434,045 (CDN \$67,000,000) and one on behalf of all applicable Canadian former employees they represent in the amount of U.S. 81,789,815.20 (CDN \$92,201,660.00) (collectively, the “OPEB Claims”). Prior to the deadline for claim

evaluation Davies and the Applicants agreed that, as a matter of efficiency, the issues in dispute should be the subject of a bifurcated process of resolution.

77. In the first stage, the Claims Officer will determine whether the Applicants had the right to amend or terminate the OPEBs provided to the respective claimants, such that the claimants had no legal entitlement to continued benefits and therefore there are no damages arising from their termination. If a legal entitlement to continued benefits is found to exist, the Claims Officer will proceed to the second stage in determining any valuation issues regarding the two OPEB Claims. If no legal entitlement is found to exist, the Notice of Disallowance issued by the Monitor will be upheld as a final determination of the OPEB Claims.

78. The OPEB Claims have been referred to the Claims Officer for the determination of the first stage in the bifurcated resolution process. On October 26, 2010, the Claims Officer established a timetable for the exchange of evidence and submissions with respect to the first stage of the OPEB Claims determination, which requires that all submissions including reply be exchanged by December 3, 2010. It is anticipated that an oral hearing, if determined to be necessary by the Claims Officer, will take place in December.

*(iv) CEP Claims with Labour Arbitrator*

79. The CEP has filed two claims with respect to its Quebec locals 189 and 894 which require a determination of a specific labour law component, as compared to simply a financial determination or assessment. The first is in respect of outstanding grievances, and the second relates to the retiree life insurance benefits provided to retirees of those locals. The labour aspect of these claims requires an analysis of the collective agreements (which are in French) and the impact of certain sale transactions on the ability of the CEP to maintain the claims against the Applicants.

80. The Applicants and counsel for the CEP engaged in discussions regarding the most efficient and cost-effective means of having these claims resolved, and concluded that a determination by a labour arbitrator would be advisable. The Monitor and the Claims Officer support this approach.

81. The parties have agreed that the two CEP claims referred to above will be determined at a one-day hearing to be conducted by a bilingual labour arbitrator. The decision of the labour arbitrator will have the same effect as a decision issued by the Claims Officer, and is confirmed by all parties to be in accordance with the Claims Order. Pursuant to the Claims Order, any hearing required to determine a disputed claim shall be heard in Toronto. Counsel for the Applicants and the CEP are in discussions to confirm the logistical details for the determination of these two CEP claims, and expect that the hearing for those claims will be scheduled shortly.

(v) *Plaster Rock Lien Claims*

82. As outlined in prior affidavits filed in this proceeding, Fraser Papers retained the services of KMW Energy Inc. ("KMW") to install a biomass fired energy system at its facility in Plaster Rock, New Brunswick, pursuant to an agreement dated September 18, 2008 (the "KMW Contract"). In addition to the KMW Contract, Fraser Papers and KMW also entered into an agreement with RHI Canada Inc. ("RHI") dated August 5, 2009 (the "RHI Agreement"). RHI worked on the Plaster Rock modernization project providing certain materials and services related to the installation of the energy system, as a subcontractor to KMW.

83. A dispute exists between RHI on the one hand and KMW and Fraser Papers on the other, regarding the proper amount due and owing to RHI pursuant to the RHI Agreement. Fraser Papers paid CDN\$553,937.11 to RHI on or about March 2, 2010 representing the maximum amount that Fraser Papers believes could be payable to RHI. RHI continues to assert that further amounts are owing.

84. I have been advised by Danny Nunes, an associate with TGF, that a motion has been scheduled for December 1, 2010 to determine whether any further amounts are owing pursuant to the RHI Agreement.

85. KMW also retained a number of other subcontractors throughout the course of its work at the Plaster Rock facility and a number of liens were registered by certain subcontractors. The Plaster Rock facility formed part of the Purchased Assets under the SPB Purchase Agreement. Fraser Papers' position has been and remains that it has paid all amounts owing to KMW under the KMW Contract and KMW has failed to remit payment to certain of its subcontractors. I am

advised by Mr. Nunes that KMW has never disputed that all amounts owing to it under the KMW Contract have been paid in full by Fraser Papers.

86. Fraser Papers has been working with KMW to try and address the outstanding liens. I am advised by Mr. Nunes that he has confirmed to KMW's counsel that a satisfactory resolution as between Fraser Papers and KMW must be reached prior to the return date of the RHI motion, failing which Fraser Papers will seek relief as against KMW at that time with respect to amounts paid by Fraser Papers to KMW that were not remitted to KMW's subcontractors.

### ***I. Remaining Issues in Restructuring***

#### ***(i) Sale of Gorham Mill***

87. The Gorham Mill purchases all of its pulp requirements from third party suppliers. Higher pulp prices over the past year have increased overall manufacturing costs at the Gorham Mill, making it more difficult for it to compete against larger, integrated competitors. This has resulted in significant downtime at the Gorham Mill, as noted earlier in this Affidavit.

88. During the course of the CCAA proceedings, the Applicants considered a number of strategic initiatives to restructure the operations at the Gorham Mill, however, each of those initiatives required additional capital that was not available to the Applicants.

89. The Applicants had discussions with several parties who expressed an interest in conducting further due diligence to determine whether they would submit a letter of intent to purchase the Gorham Mill.

90. With the Monitor's assistance, the Applicants actively marketed the Gorham Mill to prospective purchasers. In total, fifteen (15) parties signed confidentiality agreements. Those prospective purchasers were given access to an electronic data room for the purpose of conducting preliminary due diligence.

91. Prospective purchasers were given until March 16, 2010 to submit non-binding letters of intent ("LOIs"). The Applicants received a number of LOIs from prospective purchasers and commenced negotiations towards reaching an agreement of purchase and sale with those parties.

On May 21, 2010, the Applicants executed a purchase agreement (the "Original Gorham APA") with one party (the "Original Gorham Purchaser").

92. The transaction contemplated by the Original Gorham APA was for a going-concern sale of all of the assets relating to the Gorham Mill, and resulted in the continuing employment of approximately 240 employees.

93. Pursuant to an Order dated July 7, 2010, the Original Gorham APA was approved by the Canadian Court. At that time, two material conditions had not yet been satisfied.

94. The Applicants advised the Court that if the two material conditions could not be satisfied and the Gorham Purchase Agreement did not, or was not expected to close, the Applicants would return to Court after consultation with the Monitor, to advise as to the recommended manner of realizing on the Gorham Mill.

95. The Applicants sought and obtained the U.S. Court's approval of the Original Gorham APA pursuant to an Order dated July 14, 2010.

96. The closing date under the Original Gorham APA was July 20, 2010 (60 days after execution of the Original Gorham APA on May 21, 2010) but the Applicants and the purchaser negotiated an extension of the closing date until August 31, 2010 to permit the purchaser to conclude its due diligence and satisfy the condition for financing by August 25, 2010.

97. I was subsequently advised by the purchaser under the Original Gorham APA that it would not be able to satisfy the financing condition prior to August 25, 2010. In view of the benefits to the Applicants' stakeholders through the going concern sale contemplated by the transaction, the parties negotiated a further extension of the closing date to September 30, 2010 and a further extension of the deadline for satisfying the financing condition to September 17, 2010.

98. On or about September 13, 2010, I was advised by the purchaser that it required a further extension of the financing condition deadline. The Applicants and the purchaser negotiated a short extension of the financing condition deadline from September 17, 2010 to September 22, 2010. This amendment preserved the going concern sale contemplated by the Original Gorham

APA, while at the same time permitting the Applicants to minimize the impact of any potential future shutdown of operations (if the transaction did not close) by managing inventory levels down. Furthermore, as part of this amendment, all of the Applicants' covenants under the Original Gorham APA that related to the operation of the business in the ordinary course were waived by the purchaser in consideration of the extension.

99. Prior to the financing deadline of September 22, 2010, I was advised by the purchaser that the purchaser would not be able to conclude its financing arrangements if it had to purchase the accounts receivable and certain types of inventory as contemplated under the terms of the Original Gorham APA. As such, the parties commenced discussions on a further amendment to the Original Gorham APA to delete "Accounts Receivable" and "Finished Products" from the definition of Purchased Assets. The effect of this amendment was that the Applicants would remain responsible for the collection of accounts receivable and the sale of finished goods (thereby decreasing the purchase price to be received pursuant to the Original Gorham APA), but the going concern nature of the sale would be preserved. This amendment was ultimately never executed by the parties.

100. On or about September 27, 2010, I was advised by the purchaser that it could not arrange the necessary financing to close the transaction. The Applicants advised the Monitor of the purchaser's inability to secure adequate financing. On September 28, 2010 the Applicants served the purchaser with a notice terminating the Original Gorham APA.

101. I am advised by Mr. Nunes of TGF and do verily believe that notice of the termination of the Original Gorham APA was sent to the Service List in this proceeding on September 28, 2010. All parties were advised that the Gorham Mill would be shut down indefinitely on or about October 13, 2010, subject to the Applicants receiving acceptable orders from customers, as it would otherwise be cost prohibitive to keep the Gorham Mill operating.

102. I am further advised by Mr. Nunes and do verily believe that he advised the Court of the termination of the Original Gorham APA during a chambers appointment in this proceeding on September 29, 2010.

103. The Applicants were able to secure sufficient orders to keep the Gorham Mill operating until October 13, 2010. The Gorham Mill was then closed indefinitely on October 13, 2010 and the majority of the production employees were indefinitely laid off.

104. The Applicants, in consultation with the Monitor, approached those parties who had previously expressed an interest in purchasing the Gorham Mill and had submitted LOIs. Due to the significant costs that the Applicants would incur during the winter months to keep the Gorham Mill operational and allow for it to be re-opened, the asset purchase agreement provided to those parties required a closing on or before November 30, 2010. Prospective purchasers were given until October 21, 2010 to submit an unconditional offer. The Applicants did receive a number of offers to purchase the Gorham Mill. It is the Applicants' hope that a sale of the Gorham Mill to a purchaser would immediately (or in future) provide continued employment for the Gorham Mill's existing employees.

105. The Applicants are currently reviewing the offers and proposals received with the Monitor, and considering the best outcome for the Applicants' stakeholders. In anticipation of a sale of the Gorham Mill being negotiated within the next several days, the Applicants have scheduled two motions before the U.S. Court. The first is on November 3, 2010 at 3:30 pm, and the second is on November 22, 2010. Due to the longer service and notice requirements in the U.S. for a sale approval Order, and the fact that a Canadian approval Order would have to be obtained first, the November 3, 2010 court attendance in the U.S. was determined to be the most efficient means of addressing the U.S. service requirements. This procedure allowed the Applicants to provide notice to all stakeholders of the impending sale of the Gorham Mill in advance of an actual agreement being concluded, through the interim "placeholder" motion for approval of the process, thereby satisfying the lengthy service and notice requirements. The Applicants have not yet scheduled a motion seeking approval of a sale of the Gorham Mill, and will do so as soon as an agreement has been executed.

*(ii) Maine Lumber Mills*

106. The Applicants are also engaged in negotiations for the sale of the Maine Lumber Mills. Pursuant to an Order dated July 7, 2010 the offer solicitation process for the Maine Lumber Mills prepared by the Applicants with the assistance of the Monitor was approved by the Court.

107. The Applicants sent "teaser" letters and confidentiality agreements to fifty (50) prospective purchasers and received twenty-seven (27) signed confidentiality agreements. All of the parties who executed confidentiality agreements were given access to an on-line data room established by the Applicants and all twenty-seven prospective purchasers were provided with a template letter of intent to be submitted to the Applicants.

108. The Applicants received a number of letters of intent for the purchase of the Maine Lumber Mills. Some of the letters of intent contained a purchase price that was deemed too low by the Applicants and, as such, were excluded from further consideration. The remaining prospective purchasers were contacted and a draft asset purchase agreement was provided to each of them.

109. The Applicants, in consultation with the Monitor, are currently engaged in negotiations with the remaining prospective purchasers.

*(iii) Other Discussions*

110. The Applicants and the Monitor have also been approached by BAM with respect to a possible transaction which would include, in part, a purchase of the common shares of Fraser Papers Holdings Inc., the U.S. parent of the U.S. Applicants, Fraser Papers Limited and Fraser Timber Limited. Those discussions are at a preliminary stage, but the Applicants understand that a transaction which includes the purchase of the shares of the U.S. Applicants would necessarily encompass the Maine Lumber Mills, as this would follow from ownership of such shares.

111. In view of the sales process undertaken by the Applicants in accordance with the Order dated July 7, 2010, and the fact that BAM is non-arms' length to the Applicants, the Applicants have requested that the Monitor be responsible for considering the terms of any transaction proposed by BAM, in view of offers received from third parties for a sale of the Maine Lumber Mills. This includes the Monitor being present on all calls and at all meetings with BAM regarding a possible transaction, and with third party purchasers with regards to any sale of the Maine Lumber Mills. The Applicants and the Monitor will take all precautions to ensure that the integrity of the process undertaken for the sale of the Maine Lumber Mills, and the dynamics necessary to realize maximum value, are preserved at all times.

112. At the time of swearing this Affidavit, the Applicants and the Monitor have not sufficiently advanced discussions with BAM on a potential transaction, or concluded negotiations with third party purchasers for the Maine Lumber Mills, to determine whether the Applicants and the Monitor could recommend one potential path over the other. The Applicants and the Monitor anticipate providing further information to the Court and all stakeholders within the next two weeks, in connection with any relief to be sought relating to the Maine Lumber Mills.

(iv) *Katahdin Preferred Units*

113. As described in paragraph 13(c) of the Affidavit of J. Peter Gordon sworn June 18, 2009 in support of the Initial Order in this proceeding (the "Initial Affidavit"), Fraser Papers Limited is the sole member of Katahdin Services Company LLC ("Katahdin Services") which, on behalf of the Applicants, managed (but did not fund) the operations of Katahdin Paper Company LLC ("Katahdin Paper"), which is an indirect, wholly-owned subsidiary of BAM that owns a paper mill in Maine. Fraser Papers Limited owns 10,000 convertible, term, preferred units of Katahdin Paper and also holds an option to purchase all common units of Katahdin Paper.

114. This investment was written down to "nil" at the end of the Applicants' fiscal year ending December 31, 2009 as there was no actual or realizable value in the investment. There is no anticipated recovery from this investment at any time, and the Applicants do not propose to take any steps or incur any costs in connection with this investment.

(v) *Mineral Rights in Maine Timberlands*

115. In 2005 when Fraser Timber Limited sold certain timberlands located in the State of Maine, it retained the right to any minerals that existed under the land. There is no known value to these mineral rights. A party who had previously expressed some interest was contacted on May 31, 2010 and is no longer interested. There is no anticipated recovery for these rights, and the Applicants do not propose to take any steps in that regard.

(vi) *Fishing Camp in Northern Quebec*

116. Fraser Papers owns an old fishing camp in Northern Quebec that was appraised at between \$34,000 and \$89,000 during 2009. The Applicants intend to sell this camp as soon as possible, although the net proceeds of sale are expected to be minimal. The Applicants have listed the building for sale with Remax Tremblant Inc. The real estate agent is in the process of soliciting offers from individuals who had previously expressed an interest in the property.

*(vii) Tax Refunds*

117. All tax refunds which the Applicants were entitled to receive have now been collected, and no further recoveries are expected.

*(viii) Income Tax Losses*

118. The Applicants have generated significant income tax losses in the United States and in Canada prior to and subsequent to the Initial Order. The Applicants are in the process of determining whether there is a means to realize upon any value associated with these tax losses.

*(ix) Moraine Landfill :*

119. The Moraine landfill is a closed landfill site in the town of Moraine, Ohio. The Applicants are responsible for the post-closing care and maintenance costs associated with this site. The costs of maintaining this site are approximately \$60,000 per year. I intend to schedule a meeting with the town manager in the coming weeks to discuss maintenance of this site in the future.

***J. CCAA Plan of Arrangement***

120. Early in this proceeding, the Applicants, in consultation with the Monitor, determined that they would be unable to continue their operations over the long term in their present form. The integrated nature of the Applicants' operations, whereby all steps required for the production of paper were undertaken through inter-related companies and operations, was not viable and did not provide sufficient flexibility to address changing market conditions. In addition, due to the ongoing significant losses experienced by the Applicants over several years, there was virtually no access to the additional financing necessary to continue operations, even if the substantial pre-filing liabilities and long-term obligations could be addressed through a Plan.

121. The Applicants therefore focussed their efforts on finding ways to maximize value for the benefit of their stakeholders, through whatever means possible. These efforts were not limited to realizing upon all assets and making a distribution of net proceeds. Rather, the Applicants considered the overall interests of their stakeholders including employees, retirees, pension regulators, customers, suppliers, trade creditors, and the social and economic interests of the provincial, state and local communities in which they had operated for many years. Those interests required a more comprehensive solution.

122. The Applicants were faced with an additional challenge at the time of filing, in that they had not generated positive cash flow for many years prior to filing, and have not done so during the CCAA proceeding. This required a significant commitment of new financing, and ongoing support from existing lenders and the DIP Lender. As a result, due to the sale or impending sale of all of the Applicants' operations, the Applicants have limited options to offer creditors through a Plan, as there will be no ongoing operations following implementation of a Plan.

123. In addition to the consideration realized through these sales efforts, the value created by the Applicants for their creditors includes the following:

- Future employment for virtually all of the Applicants' hourly and salaried employees at all locations including the Thuro Mill in Quebec, the specialty paper business in New Brunswick and Maine, the Gorham Mill in New Hampshire (provided a going concern sale is concluded) and the two Maine Lumber Mills
- Ability for employees to continue making contributions to a registered pension plan on a defined contribution basis through ongoing employment
- A 49% common equity interest in Twin Rivers Paper Company Inc. and an active role in the future of that company in the form of one representative on its board of directors for each of the CEP and the Applicants' unsecured creditors generally
- Promissory Notes issued by Twin Rivers Paper Company Inc. under the SPB Purchase Agreement in the aggregate amount of \$40 million, as adjusted and increased pursuant to the terms of the SPB Purchase Agreement

- Mitigating the impact of existing pension deficits in the NB Plans through the negotiation of a comprehensive settlement involving a legislative amendment, an extended period of plan wind-up over 8 years to permit the possibility of market recovery of the plan assets
- Negotiating the termination of the U.S. Plan on a consensual basis to ensure that affected beneficiaries could access protections afforded by the PBGC on a timely basis
- Negotiating agreements with the NB Superintendent, the Administrator appointed over the NB Plans and the Ontario Pension Benefit Guaranty Fund to ensure a seamless administration of benefits, regardless of the location of the employee or retiree
- Negotiating the return of the WDNR LCs having a face value of \$2,722,475, secured by a charge in priority to unsecured creditors, for no cash consideration payable by the Applicants
- Negotiating the conversion of approximately CAD\$35 million in secured debt ranking ahead of unsecured creditors, to a preferred equity position in Twin Rivers Paper Company Inc. ranking subordinate to the rights of the Applicants' unsecured creditors to receive repayment of the Promissory Notes payable by Twin Rivers Paper Company Inc.
- The assumption of significant liabilities, including long-term environmental obligations and benefit obligations to employees and retirees, by the purchasers of various operations

124. Any potential distributions to unsecured creditors are subject to the DIP Lender receiving payment in full of all amounts currently owing, and any and all amounts that may subsequently be advanced under the DIP Loan Agreement in accordance with its terms until the time of voting on a Plan of Arrangement, the sanctioning and confirmation of a Plan by the Canadian and U.S. Courts, and implementation of the Plan. If the proceeds of sale of the Gorham Mill or Maine Lumber Mills are insufficient to repay existing and future advances owing to the DIP Lender in full, distribution of value to unsecured creditors may be delayed or ultimately unavailable.

125. As the forecast net cash flow is negative over the next four months, ongoing efforts are being made to conclude the CCAA restructuring in as cost-effective and efficient a manner as possible. The DIP Lender continues to review the level of borrowings and requests for advances

under the DIP Loan Agreement, relative to its ability to receive repayment of its secured indebtedness. At this time, the Applicants do not anticipate any scenario where cash will be available for distribution to unsecured creditors. In addition, there may be a shortfall in the repayment of all amounts ultimately owing under the DIP Loan Agreement. Any distribution to unsecured creditors (assuming that all amounts owing under the DIP Loan Agreement are fully repaid) will likely therefore be limited to some portion of the Promissory Notes and 49% common share equity in Twin Rivers Paper Company Inc. received by the Applicants under the SPB Purchase Agreement.

126. A central feature of the Applicants' Plan will be confirmation of the vehicle created or appointed to hold the interest of the unsecured creditors (other than those unsecured creditors who are otherwise covered by the Outside Trusts) in the 49% common shares of Twin Rivers Paper Company Inc. and Promissory Notes received by the Applicants under the SPB Purchase Agreement. The Applicants and the Monitor have discussed the nature of the entity to perform this task, the anticipated funding requirements, the role and duties of the trustee or administrator to hold and ultimately distribute the notes and shares, and the possible scenarios that would require the trustee or administrator to take certain actions for the benefit of the Applicants' unsecured creditors. The Applicants and the Monitor have also had a preliminary discussion with court-appointed counsel for the employees and retirees as to the terms and structure of such entity, as that group comprises one of the largest constituents of unsecured creditors represented through the administration of these illiquid assets.

127. The Outside Trust created in respect of each of the NB Plans will hold its *pro rata* distribution of the Promissory Notes and shares for the benefit of the beneficiaries of each Outside Trust, namely the beneficiaries of each of the NB Plans.

128. The Promissory Notes and common shares contain certain restrictions that prohibit their distribution to creditors directly, unless and until such time as they are realized upon. These include restrictions to ensure that the shares do not become widely-held, restrictions on trading or assigning the Promissory Note or common shares, and restrictions on the number of Promissory Notes that can be issued.

129. The Applicants will continue to work with the Monitor and representatives for the unsecured creditors to establish a vehicle that meets the needs of unsecured creditors, while complying with the terms and restrictions in the Promissory Notes and shares, and doing so within a framework that is financially and in other respects feasible.

130. To the extent that the Applicants execute a binding agreement of purchase and sale for the Gorham Mills within the next several days, I would anticipate a closing of that sale transaction by November 30, 2010. I would also expect to conclude a sale of the Maine Lumber Mills shortly thereafter. Subject to receiving authorization and direction from the Court as requested in the Applicants' Notice of Motion herein, the Applicants intend to circulate a draft Plan for discussion among their largest stakeholders within the next 30 days. The Applicants' ability to move quickly to completion and implementation of the Plan will depend in large part on the willingness of their creditors to do so.

(i) *Proposed Substantive Consolidation*

131. In considering a Plan to be presented to creditors, the Applicants are of the view that the Plan should be drafted on the basis of substantive consolidation of all Applicants. The CCAA proceeding and Chapter 15 proceeding are currently consolidated for procedural and administrative purposes only.

132. The Affidavit of J. Peter Gordon sworn June 18, 2009 in support of the Initial Order in this proceeding (the "Initial Affidavit") outlined in detail the integrated nature of the Applicants' operations, and financial inter-dependence and reporting in support of the Centre of Main Interest ("COMI") being Toronto. Many of the same considerations are relevant in considering the issue of substantive consolidation of the Applicants within the context of a Plan. For ease of reference, portions of that Initial Affidavit are reproduced below, and I confirm the accuracy of each of the statements originally sworn to at that time by Mr. Gordon:

20. The business of the Fraser Group is fully integrated including between the Canadian and the U.S. operations. The four lumber mills supply wood chips and biomass (bark and other wood fibre residuals), by-products of the lumber manufacturing process, to the sulphite pulp mill in Edmundston, New Brunswick. The hardwood pulp mill in Thuroso, Quebec supplies pulp to the Company's two paper mills in Madawaska, Maine and Gorham, New Hampshire. The pulp and energy operations in Edmundston, New Brunswick and the paper mill in Madawaska, Maine (collectively referred to as the "East

Papers Operations") are physically connected, with pipelines joining the two plants across the international border between New Brunswick and Maine. Pulp and steam are produced at the Edmundston facilities and delivered by pipeline to the Madawaska paper mill, where specialty papers are manufactured. A diagram outlining the physical location and proximity of each of the Fraser Group's facilities is annexed hereto and marked as Exhibit "B".

21. The Applicants are of the view that the restructuring of the Fraser Group will be administered most efficiently through a single, centralized restructuring process. Such a process would likely minimize the cost of the restructuring, minimize the time necessary to effect the restructuring and thereby maximize the overall value of the assets and operations for all stakeholders.

22. It is contemplated that the CCAA proceeding in Canada will be the primary court supervised process for the restructuring of the Fraser Group. While the restructuring will be undertaken in Canada, the Applicants will seek an Order pursuant to Chapter 15 of the U.S. *Bankruptcy Code* to have this proceeding recognized as a foreign main proceeding in order to facilitate the implementation of matters in the U.S. that have been approved in the CCAA proceeding.

23. The Applicants are of the view that Fraser Papers' centre of main interest ("COMP") is Ontario. Its registered head office is in Toronto and all corporate, management, banking, and strategic functions are undertaken from its head office in Ontario.

24. In support of the Applicants' position that the COMI for the other Applicants is also Ontario:

- (a) all corporate strategic decision-making for the Fraser Group occurs at the Fraser Papers' head office, and the Chief Executive Officer and Chief Financial Officer have their primary business office in Ontario;
- (b) as CEO of Fraser Papers and Chairman of each of the other Applicants I am involved, along with other members of the senior management team, in all material decisions regarding the operations of all Applicants including the terms and conditions for any material contracts and all such decisions are directed from, made in or monitored from our offices in Ontario;
- (c) budgeting for each facility is approved at Fraser Papers' head office in Ontario;
- (d) human resource policy and administration, including certain human resource functions, pension plan administration and certain compensation and benefits functions are performed and located in Ontario;
- (e) all treasury management functions including a centralized cash management system and centralized banking arrangements for the Fraser Group are conducted from Fraser Papers' head office in Toronto;
- (f) financial reporting of the Applicants is done on a consolidated basis and the audited financial statements are prepared in Ontario;

- (g) investor communications functions are undertaken at the head office;
- (h) all corporate minute books for the Applicants are located and maintained in Ontario;
- (i) each Applicant has a bank account in Ontario with at least a small credit balance;
- (j) with the exception of a term loan made available to Fraser Papers by the Province of New Brunswick (the "N.B. Loan"), all credit facilities of the Applicants are with lenders who manage such facilities in Toronto, Ontario, and all loans are advanced to Fraser Papers as borrower;
- (k) the Board of Directors' meetings are held in Ontario; and
- (l) the location of the Company's major shareholder is in Ontario.

25. As the business operations of the Applicants are functionally integrated, there are a number of suppliers, creditors and other stakeholders of the Fraser Group that are common to several of the Applicants.

26. All credit facilities and loans advanced to the Fraser Group are advanced to Fraser Papers as borrower. However, with the exception of the N.B. Loan, all of the Applicants have directly or indirectly guaranteed those credit facilities.

27. In addition, as described in more detail below, there is a significant degree of integration in the cash management arrangements among the Applicants, with the companies borrowing and advancing funds within the Fraser Group as needed, further demonstrating the integrated operations of the Fraser Group and the necessity for dealing with the restructuring in a procedurally-consolidated manner. As the operations of the Fraser Group are managed centrally at the Fraser Papers level, the Applicants are of the view that Ontario is the most appropriate forum for overseeing the restructuring of the entire Fraser Group.

133. The financial affairs of the Applicants are inextricably linked to one another, through the existence of cross-guarantees and direct loans and advances. The Applicants have always been viewed as part of an integrated group, and audited financial statements have always been prepared on a consolidated basis to include all Applicants. Portions of the Initial Affidavit that address the integrated nature of the cash and financial relationship of the Applicants to one another are reproduced below for ease of reference:

***Funding of U.S. Operations***

105. Similar banking arrangements exist with respect to the plants owned and operated by the U.S. subsidiaries of Fraser Papers. Holdings maintains a Canadian and U.S. dollar corporate account in the U.S. Separate U.S. dollar bank accounts are maintained for each of the mills in that jurisdiction (Fraser Madawaska, Fraser Gorham, and Timber) to fund disbursements relating to that mill. The Applicants' U.S. operations

are funded in part from the receipts generated from daily operations and these receipts are used to fund their disbursements, both to third parties and to Fraser Papers. These cash receipts are deposited to three lockbox accounts that are controlled by Fraser Madawaska and Timber, to receive deposits for all U.S. sales of the U.S. Applicants. Any shortfall or excess cash in each of the U.S. Applicant's accounts is swept to the Holdings' corporate account. Holdings will generally use any excess funds to repay amounts owing to Fraser Papers. Any shortfall in the Holdings corporate account will be funded by Fraser Papers as described below.

106. Holdings, Fraser Madawaska and Timber also have bank accounts in Canadian dollars to fund disbursements in this currency. Similar to the U.S. dollar accounts, any shortfall or excess in the Fraser Madawaska or Timber accounts is swept to the Canadian dollar Holdings' account which, in turn, is funded by the U.S. dollar account.

107. Each of Timber, Fraser Madawaska, and Fraser Gorham also have bank accounts in Canada to facilitate any cash flows that may occur directly between Fraser Papers and its indirect, wholly-owned subsidiaries. These accounts are rarely used, as all funding of the U.S. operations occurs through intercompany loans between Fraser Papers and Holdings.

108. Funding between Fraser Papers and Holdings is effected through an intercompany revolving working capital line note agreement dated July 20, 2005 and amended in August, 2007 (the "Intercompany Note Agreement"), a copy of which is attached hereto and marked as Exhibit "E". Holdings owed Fraser Papers approximately \$71.8 million as at May 2, 2009 under the Intercompany Note Agreement.

109. The amount outstanding under the Intercompany Note Agreement decreases as any excess cash in Holdings is paid to Fraser Papers. The amount outstanding under the Intercompany Note Agreement increases if Fraser Papers is required to fund any cash shortfalls in Holdings.

110. Each of the Applicants has their own accounts payable function. Fraser Madawaska performs the accounts payable function for the Madawaska, Maine, Edmundston, New Brunswick and Portland, Maine locations.

111. It is anticipated that the Fraser Group will continue to use the existing cash management system and will continue to maintain the bank accounts and funding arrangements already in place. This approach will minimize any disruption to the business operations of the Fraser Group as it seeks to restructure its affairs. CIT and Brookfield, who have each indicated that they will make DIP Financing (as hereafter defined) available to the Applicants if the Initial Order is granted, have confirmed that they support the continued operation of the existing cash management system during the CCAA proceedings.

\* \* \* \* \*

#### *Banking, Clearing and Accounting*

132. Local bank accounts for each mill are "zero balanced" daily and cleared to the corporate head office bank accounts. Under this process, daily mill disbursements are

funded by the corporate accounts. Canadian bank accounts are cleared to a Fraser Papers' account and U.S. accounts are cleared to a Fraser Holdings account. The offsets to these transfers are intercompany liabilities between the respective entities. These intercompany balances are not cleared regularly and are allowed to accumulate as described below.

133. Cash requirements of the U.S. operations are funded by the Intercompany Note Agreement between Fraser Papers and Fraser Holdings, as described above. As such, if net cash is required by one of the U.S. subsidiaries to pay third party suppliers or pay Canadian purchases from the previous month, it is borrowed by Fraser Holdings from Fraser Papers through the Intercompany Note Agreement. Fraser Papers, as needed, will borrow the necessary funds from its revolving facility with CIT.

134. Monthly mill balances are transferred to the corporate ledgers maintained by FPS Canada (for the Canadian operations) and Fraser Madawaska (for the U.S. operations). Balances due and from operations within each respective country are not paid but allowed to accumulate, subject to infrequent clearing. The balances among the Canadian operations are effectively offset, as they are all owned by the same legal entity. As the U.S. operations are owned by separate legal entities, they are not offset but effectively eliminated when consolidated financial reporting is prepared for the Fraser Group.

135. Balances due between Canadian and U.S. operations as a result of the purchases of goods or services are paid in cash monthly in the month following the date of the transaction.

136. Intercompany balances are presented in the Applicants' internal financial reporting as balances due between related parties, which eliminate upon consolidation.

134. In addition to their physical, operational and financial integration, the Applicants have also considered the manner in which third parties may have viewed their dealings with the Applicants. I am advised by Tracey Weaver, Vice-President of PricewaterhouseCoopers Inc. and the individual responsible for overseeing the claims process on behalf of the Monitor, that of the 1,202 Proofs of Claim received pursuant to the claims process 1,005 were accepted by the Monitor as allowed claims. Of the 1,005 allowed claims, 966 (excluding 13 contingent claims) are trade claims. Of those 966 trade claims, approximately 190 were filed against the wrong Applicant. Of those 190 claims, approximately 180 of them were filed incorrectly as between Canadian and U.S. Applicants. This means that 19% of the trade creditors dealing with the Applicants were uncertain as to which Applicant their claim was properly against, and approximately 95% of the trade creditors who filed a claim against the wrong entity confused a Canadian Applicant with a U.S. Applicant, or *vice versa*.

135. Based on my experience in dealing with customers, suppliers and other third parties on behalf of the Applicants for more than six years and with a predecessor company for ten years prior to that, and notwithstanding the specific identification on invoices and cheques for each entity, many of those parties would have considered themselves to be dealing simply with "Fraser Papers". They would not necessarily have properly considered their dealings as being with, for example, Fraser Papers Inc., Fraser Papers Limited or Fraser N.H. LLC. Dealing with the assets and liabilities of the Applicants through a substantively consolidated Plan of Arrangement addresses and reflects this fact.

136. The Applicants have considered whether any particular creditor group would be unduly prejudiced by substantive consolidation. To assist in considering this issue, I have prepared financial recovery and allocation models on an individual entity and consolidated basis that have been reviewed by and discussed with the Monitor, and on which the Monitor has provided input. This type of analysis necessarily includes a number of assumptions. In employing different assumptions and various means of performing the calculations, recoveries for each creditor group vary between scenarios, but no creditor group consistently ends up with a higher recovery than the other creditor groups in all of the scenarios considered.

137. In considering the potential recovery available for unsecured creditors through a Plan certain key assumptions must be made, including:

- (i) the Final DIP Requirements, which must be repaid prior to any recovery being available for unsecured creditors;
- (ii) the proceeds to be obtained on a sale of the Gorham Mill and the Maine Lumber Mills (together with the quantum of liabilities to be assumed, the anticipated collection of accounts receivable and realization of inventory if not included in a sale);
- (iii) the appropriate allocation of value recovered from the sale of various operations;
- (iv) the allocation of secured debt among the Applicants;
- (v) the treatment of inter-company claims, as set out below; and

(vi) the aggregate quantum of outstanding claims that may ultimately be allowed for distribution purposes pursuant to the ongoing claims process, as the claims process is not completed.

138. Each of the assumptions is made based on the best information available at this time. If information subsequently becomes available that results in the Applicants or the Monitor no longer supporting substantive consolidation, the Applicants will advise the Court as soon as possible.

139. The amount of aggregate claims used in the model prepared by the Applicants and reviewed by the Monitor include pre-filing amounts owing by one Applicant to another through an inter-company advance of funds prior to filing. This reflects the manner in which the Applicants coordinated the cash requirements of the group as a whole, through advances under the Inter-Company Note described above, which were funded from the operating facility provided by CIT.

140. The inter-company claims are included in the model for the purpose of assessing the impact of substantive consolidation on creditors of each individual Applicant. In this respect, upon substantive consolidation, inter-company claims are eliminated for distribution purposes, and creditor recoveries are based on their *pro rata* entitlement relative to all other third party claims on a consolidated, group-wide basis.

141. As discussed in greater detail below in respect of the Cash Flow Forecast, the Final DIP Requirements include an assumption that the Applicants will proceed in the preparation of a Plan on a substantively consolidated basis. If that does not occur, I believe that the Applicants' Final DIP Requirements will be significantly higher than the existing Cash Flow Forecast to take into account the following additional costs:

(i) professional fees involved in the preparation of six separate Plans in two languages, including the expense of preparing separate mailings, drafting separate Plans, calling and holding separate meetings and implementing the Plans on an individual basis;

- (ii) the cost involved in establishing and providing funding for separate vehicles or entities on behalf of each Applicant to hold the promissory notes and common shares issued by Twin Rivers Paper Company Inc., for a period of eight years until they become realizable; and
- (iii) the additional fees that would be incurred as a result of the Applicants and the Monitor negotiating any number of disputes initiated by separate creditor groups for each Applicant, with a view to allocating as much value as possible towards their particular interest, and / or minimizing the impact of claims against their creditor group.

142. The above concerns are amplified by the fact that the Applicants do not expect there to be any cash available for distribution to unsecured creditors (whether through a consolidated Plan or otherwise). Accordingly, fees and costs incurred in dealing with these contentious issues will only serve to increase the likelihood of the only other consideration (promissory notes and common shares of Twin Rivers Paper Company Inc.) not being available for distribution, but rather, being held to continue to secure amounts owing to the DIP Lender where the proceeds of sale or liquidation of the remaining assets and operations of the Applicants are insufficient to repay amounts owing to the DIP Lender under the DIP Loan Agreement.

143. I am advised by John McKenna of PricewaterhouseCoopers Inc. that, given these circumstances, the Monitor supports the preparation of a Plan on a substantive consolidation basis. The Monitor's discussion of this issue will be contained in the Monitor's Thirteenth Report to the Court.

144. For illustrative purposes and based on certain assumptions and variables including the aggregate quantum of allowed or finally-determined claims, a repayment in full to the DIP Lender (such that the entire amount of the promissory notes and common shares are available for distribution to the unsecured creditors) and using the face value of the promissory notes (\$44 million) and the attributed value of the common shares of Twin Rivers Paper Company Inc. (\$25 million), the pro-forma, *pro rata* distribution of the notes and shares would be as follows in a consolidated Plan:

$$\begin{array}{l} \$X \text{ (amount of claim)} \\ \$Y \text{ (total allowed claims)} \end{array} = Z\% \text{ of } \$69 \text{ million}$$

145. The Applicants have commenced discussions with their major stakeholders to address any questions those parties may have concerning the proposed substantive consolidation. The Applicants intend to proceed in the preparation of a Plan on a substantive consolidated basis, subject to obtaining authorization and direction from the Court in the Order sought on this motion. The Applicants will also seek a recognition Order from the U.S. Court, which hearing is scheduled for 3:30 p.m. on November 3, 2010.

#### ***K. Stay Extension and Supporting Cash Flow***

146. The Applicants require an extension of the Stay Period in order to (i) complete a going-concern sale or liquidation of the Gorham Mill, (ii) complete a sale of the Maine Lumber Mills, (iii) conclude the determination of all claims for voting and distribution purposes, and (iv) finalize a Plan for presentation to creditors. The Applicants seek an extension of the stay to February 28, 2011 which extension is supported by the Monitor and the DIP Lender.

147. If the requested relief is granted the Applicants expect to be in a position to:

- (a) complete a sale of the Gorham Mill with an anticipated closing by November 30, 2010, or if a going concern sale is not possible, conclude a transaction involving a liquidation of the Gorham Mill shortly thereafter;
- (b) conclude a transaction for a sale of the Maine Lumber Mills;
- (c) complete a realization of all residual non-operating assets;
- (d) make arrangements for the completion of any long-term obligations not otherwise assumed as part of a sale transaction;
- (e) establish whether the Applicants' can obtain any value from tax losses in the U.S. and Canada;

- (f) conclude the claims process through the final determination of all claims, including bi-furcating any claims for voting and distribution purposes if necessary; and
- (g) present a Plan to their creditors with a view to obtaining the requisite creditor and court approval and, if obtained, proceed with implementation of the terms of the Plan.

148. The Applicants have prepared the Cash Flow Forecast in support of the requested stay extension to February 28, 2011. The Cash Flow Forecast excludes any net proceeds that would be received upon the closing of the transactions for the Gorham Mill and the Maine Lumber Mills, in order to avoid compromising the process to sell these assets.

149. The Cash Flow Forecast is prepared on the basis of assumptions made by the Applicants and reviewed by the Monitor, including the aggregate amount of fees anticipated to be required to complete the restructuring. Those fees include the Canadian and US counsel for the Applicants, the Monitor and its counsel, the Claims Officer and the fees incurred by representative counsel appointed by the Court for the employees and retirees.

150. The Cash Flow Forecast indicates that the Applicants will have adequate availability under the DIP Loan Agreement (subject to and in accordance with the terms of the DIP Loan Agreement), to fund the required cash outflow during the extended Stay Period, subject to:

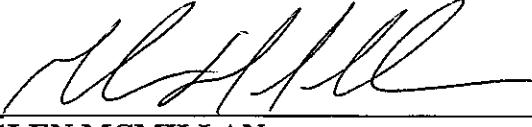
- (a) close monitoring by the DIP Lender as to the level of funding required, relative to proceeds expected to be received from the sale of the Applicants' remaining assets;
- (b) the assumptions utilized in the Cash Flow Forecast being realized. One of the key assumptions underlying the Cash Flow Forecast is the preparation of a Plan on a substantively consolidated basis for all Applicants. If the relief sought by the Applicants as it relates to the preparation of a substantively consolidated Plan is not granted, the Applicants believe that the effect on its cash requirements could be material and a revised Cash Flow Forecast would be required.

151. The DIP Lender had advised me that it supports the requested stay extension and will continue to closely monitor the progress of the Applicants' proceedings, their proposed and actual use of funds and the DIP Lender's potential recovery of all amounts owing under the DIP Loan Agreement from all available collateral.

152. I swear this Affidavit in support of the relief requested in the Applicants' Notice of Motion dated October 28, 2010 and for no other or improper purpose.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 28<sup>th</sup> day of  
October, 2010.

\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
**GLEN MCMILLAN**

# **EXHIBIT “A”**

# EXHIBIT "A"

57.  
*Execution Copy*

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## SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of July 9, 2010

by and among

**FRASER PAPERS INC.**

as Debtor Company, Debtor and Debtor in Possession,  
as Borrower,

and

**FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED,  
FRASER PAPERS LIMITED AND FRASER N.H. LLC**

as Guarantors

and

the Lenders from time to time party hereto,

and

**BROOKFIELD (US) CORPORATION**

as Initial Lender and a Lender

and

**BROOKFIELD ASSET MANAGEMENT INC.**

as Administrative Agent and Collateral Agent

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**SENIOR SECURED SUPERPRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "*Agreement*"), dated as of July 9, 2010 (the "*Effective Date*"), by and among FRASER PAPERS INC. (the "*Borrower*") and FPS CANADA INC. ("*FCP*"), FRASER PAPER HOLDINGS INC. ("*FPHF*"), FRASER TIMBER LIMITED ("*FTL*") and FRASER N.H. LLC ("*FNHL*"), together with FCI, FPHI, FTL and FNHL, the "*Guarantors*" and each a "*Guarantor*", and together with the Borrower, the "*Credit Parties*" each as debtor companies under the CCAA (as hereinafter defined) and as debtors and debtors-in-possession under Chapter 15 of the Bankruptcy Code (as hereinafter defined), the other Lenders (as hereinafter defined) party hereto from time to time, BROOKFIELD (US) CORPORATION ("*Brookfield*") as Initial Lender (as hereinafter defined) and a Lender, and BROOKFIELD ASSET MANAGEMENT INC. ("*BAM*") as administrative agent (in such capacity, the "*Administrative Agent*") and collateral agent (in such capacity, the "*Collateral Agent*").

**PRELIMINARY STATEMENTS:**

WHEREAS, on June 18, 2009 (the "*CCAA Filing Date*"), the Credit Parties as debtors-in-possession in proceedings (the "*CCAA Proceedings*") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*"), with the Ontario Superior Court of Justice (Commercial List) (the "*CCAA Court*") pursuant to the order of the Honourable Mr. Justice Morawetz dated June 18, 2009, as amended, varied, modified or restated from time to time (the "*Initial Order*");

AND WHEREAS, the Credit Parties filed for recognition of the CCAA Proceedings as foreign main proceedings (the "*US Proceedings*", together with the CCAA Proceedings, the "*Proceedings*") pursuant to Chapter 15 of Title 11 of the United States Code 11 U.S.C. §§101-1532, as amended (the "*Bankruptcy Code*") in the United States Bankruptcy Court for the District of Delaware (the "*U.S. Court*", together with the CCAA Court, the "*Courts*");

AND WHEREAS, the Borrower has requested and BAM or its affiliates have provided a senior secured superpriority loan facility (the "*DIP Facility*") to the Borrower during the Stay of Proceedings (as hereinafter defined) for the following purposes (as further described in Section 2.13): (i) to pay transaction costs, fees and expenses which are incurred in connection with the DIP Facility, (ii) for working capital purposes, and (iii) for other general corporate purposes, substantially on the terms of the Amended DIP Facility Term Sheet (the "*Term Sheet*") attached to the affidavit of J. Peter Gordon sworn July 10, 2009 and approved by the CCAA Court pursuant to the Initial Order, as amended by an Order of the CCAA Court dated April 6, 2010, such Order recognized by an Order of the U.S. Court dated May 25, 2010;

AND WHEREAS, BAM and Brookfield are parties to a transfer agreement dated as of June 3, 2010 pursuant to which Brookfield purchased the loans outstanding under the DIP Facility;

AND WHEREAS, the Lenders have provided the DIP Facility to the Borrower during the Stay of Proceedings up to the Effective Date substantially on the terms of the Term Sheet and are willing to continue to make available to the Borrower such DIP Facility upon the terms and subject to the conditions set forth in this Agreement which substantially reflect the terms and conditions of the Term Sheet;

AND WHEREAS, each of the Guarantors has agreed, to the extent set forth in Article VI hereof, to guarantee the obligations of the Borrower hereunder and the other Loan Documents and the

Borrower and each Guarantor has agreed to secure its obligations to the Lenders hereunder and the other Loan Documents with, *inter alia*, security interests in, and liens on, all of its property and assets, whether real or personal, tangible or intangible, now existing or hereafter acquired or arising, all as more fully provided herein, in the DIP Financing Orders and in the Collateral Documents;

AND WHEREAS as of the Effective Date, the parties agree and acknowledge that the aggregate amount outstanding under the DIP Facility and secured by the DIP Charge is \$12,350,000;

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**SECTION 1.01 Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings (such terms to be equally applicable to both the singular and plural forms of the terms defined):

***“Administration Charge”*** means the court ordered administration charge over the Property provided for in the Initial Order in an aggregate amount not to exceed \$850,000 Canadian Dollars for the payment of (a) allowed and unpaid professional fees and disbursements incurred by professionals and advisors retained by the Credit Parties in the CCAA Proceedings, (b) allowed and unpaid professional fees and disbursements of the Monitor in the CCAA Proceedings, including allowed and unpaid legal fees and expenses of its counsel, and (c) professional fees and disbursements of the claims officer appointed pursuant to a claims order dated July 15, 2009 in connection with the CCAA Proceedings up to an amount of \$100,000 in Canadian Dollars.

***“Advance”*** means any utilization of the DIP Facility by the Borrower, whether by way of advance of a Base Rate Loan, a LIBOR Loan or by way of issuance of one or more Letters of Credit.

***“Affiliate”*** means:

(a) as to any Agent or Lender, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person; and

(b) as to any Person other than an Agent or Lender, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this clause (b), the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to vote 10% or more of the Voting Interests of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise.

***“Agents”*** means, collectively, the Administrative Agent and the Collateral Agent and each an ***“Agent”***.

***“Agreement”*** means this senior secured superpriority debtor-in-possession credit agreement and the schedules and exhibits hereto and any amendments, supplements, restatements or other modifications hereto from time to time.

***“Applicable Law”*** means all applicable statutes, laws, ordinances, regulations, orders, writs, injunctions or decrees of the United States, any state, Canada, any provinces, any foreign country or any other Governmental Authority.

***“Applicable Margin”*** means, in the case of a Base Rate Advance, 1.75%, and in the case of a LIBOR Advance, 1.75%.

***“Applicable Percentage”*** means with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If any Commitments have terminated or expired, the Applicable Percentages in respect of the terminated or expired Commitments shall be determined based upon the relevant Commitments most recently in effect (i.e., prior to their termination or expiry), after giving effect to any assignments.

***“Approved Fund”*** means any fund or other vehicle that is administered or managed by (a) BAM, (b) an Affiliate of BAM, (c) a Lender, (d) an Affiliate of a Lender or (e) an entity or an Affiliate of an entity that administers or manages BAM or a Lender.

***“Asset Disposition”*** means the disposition of any or all of the assets (including, without limitation, any Equity Interest owned thereby) of the Borrower or any of its Subsidiaries, in one transaction or a series of transactions, whether by sale, lease, transfer or otherwise. The term “Asset Disposition” shall not include any Insurance and Condemnation Event.

***“Assignment and Acceptance”*** means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, and, if required, the Borrower, in accordance with Section 9.07 and in substantially the form of Exhibit A hereto.

***“Avoidance Actions”*** shall mean avoidance actions of the Borrower under Chapter 5 or Section 724(a) of the Bankruptcy Code (and proceeds thereof other than proceeds of avoidance actions under Section 547 of the Bankruptcy Code). The term does not include an action to avoid a transfer under Section 549 of the Bankruptcy Code.

***“Bankruptcy Code”*** has the meaning specified in the Preliminary Statements hereto.

***“Base Rate”*** means, on any day, the greater of (a) 3.00%, and (b) the annual rate of interest announced from time to time by Canadian Imperial Bank of Commerce and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada.

***“Base Rate Loan”*** means, at any time, any Loan which is outstanding at such time and in respect of which interest is to be calculated based on the Base Rate and ***“Base Rate Loans”*** means, at any time, all Base Rate Loans at such time.

***“BIA”*** means the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c.B-3, as amended.

***“Borrower”*** shall have the meaning set out in the Preliminary Statements hereto.

***"Borrowing"*** means a borrowing under the DIP Facility.

***"Borrowing Date"*** means the date on which an Advance is made.

***"Budget"*** means a rolling 13 week cash flow projection, to be updated on a monthly basis, prepared by the Credit Parties, certified by a Responsible Officer, reviewed by the Monitor and in all cases acceptable to and approved by the Required Lenders in their sole discretion.

***"Budget Variance Report"*** means a report, in each case certified by a Responsible Officer of the Borrower, in form satisfactory to the Required Lenders in their sole discretion, delivered in accordance with Section 5.03(g), showing actual cash flows and the aggregate maximum amount of utilization of the Advances for each such week as of the end of the week immediately preceding the week during which such Budget Variance Report is delivered and the variance (as a percentage) of such amounts from the corresponding anticipated amounts therefor set forth in the Budget.

***"Business Day"*** means any day that is not (i) a Saturday, Sunday or other day on which commercial banks in Toronto, Ontario are authorized or required by Applicable Law to remain closed; and (ii) in the case of any U.S. Dollar - denominated Borrowing, any other day on which commercial banks in New York, New York are authorized or required by Applicable law to remain closed.

***"Canadian Dollars"*** means lawful money of Canada.

***"Canadian Pension Plan"*** means any "registered pension plan" as defined under the *Income Tax Act* (Canada) administered or contributed to by (or to which there is or may be an obligation to contribute by) the Borrower or any Subsidiary of the Borrower incorporated under the Applicable Laws of Canada or any applicable province or territory thereof, in respect of any Person's employment in Canada or a province or territory thereof with the Borrower or any Subsidiary of the Borrower incorporated under the Applicable Laws of Canada or any applicable province or territory thereof, all related funding agreements and all related agreements, arrangement and understandings in respect of, or related to, any benefits to be provided thereunder. For greater certainty, a ***"Canadian Pension Plan"*** shall include the Pension Plan for New Brunswick Hourly Employees of Fraser Papers Inc. and the Pension Plan for New Brunswick Salaried Employees of Fraser Papers Inc., in respect of which a final wind-up Order was issued by the Superintendent of Pensions for New Brunswick on April 28, 2010, effective as of April 27, 2010.

***"Canadian Pension Plan Event"*** means the occurrence of any of the following events other than the failure to pay the special amortization payments in relation to a Canadian Pension Plan (the *"Special Amortization Payments"*) and other than where such event has been approved by the CCAA Court in connection with the CCAA Proceedings at the Effective Date: (a) any default or violation under a Canadian Pension Plan by any Credit Party or by any other party to any Canadian Pension Plan or the failure to pay any contribution or premium required to be paid to or in respect of any Canadian Pension Plan in a timely fashion in accordance with the terms thereof and all Applicable Law or any taxes, penalties or fees are owing or eligible under any Canadian Pension Plan beyond the date permitted for payment of same; (b) the receipt by a Credit Party of any notice from any Person questioning or challenging the establishment, registration, qualification, administration or investment of a Canadian Pension Plan in compliance with the terms thereof and all Applicable Law (other than in respect of any claim related solely to that Person); (c) any proceeding, action, suit or claim (other than routine claims for benefits) pending or threatened involving any Canadian Pension Plan or its assets, or the existence of facts which could reasonably be expected to give rise to any such proceeding, action, suit or claim (other than routine claims for benefits); (d) any event respecting any Canadian Pension Plan which would entitle any Person (without the consent of the applicable Credit Party) to wind-up or terminate any Canadian

Pension Plan, in whole or in part, or which could reasonably be expected to adversely affect the tax status thereof; (e) a material going concern unfunded actuarial liability, past service unfunded liability or solvency deficiency in excess of \$200,000,000 exists with respect to any single Canadian Pension Plan to the best of the Credit Party's knowledge or as revealed in actuarial valuation reports filed with applicable Governmental Authorities; or (f) the occurrence of an improper withdrawal or transfer of assets from any Canadian Pension Plan.

***“Capital Expenditures”*** means, for any Person for any period, the sum (without duplication) of all expenditures made, directly or indirectly, by such Person or any of its Subsidiaries during such period for equipment, fixed assets, real property or improvements, or for replacements or substitutions therefor or additions thereto, that have been or should be, in accordance with GAAP, reflected as additions to property, plant or equipment on a Consolidated balance sheet of such Person.

***“Capitalized Leases”*** means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

***“Cash Equivalents”*** means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six months from the date of acquisition thereof; (b) commercial paper, maturing not more than 270 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (c) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than \$500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of \$2,500,000,000; (f) tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's; and (g) marketable direct obligations issued or unconditionally guaranteed by the Canadian Government or issued by any agency thereof and backed by the full faith and credit of Canada, in each case, maturing within six months from the date of acquisition thereof.

***“CCAA”*** has the meaning specified in the Preliminary Statements hereto.

***“CCAA Court”*** has the meaning specified in the Preliminary Statements hereto.

***“CCAA Filing Date”*** has the meaning specified in the Preliminary Statements hereto.

***“CCAA Orders”*** means, collectively, the Initial Order and all other orders issued or to be issued by the Canadian Court in connection with the CCAA Proceedings.

***“CCAA Proceedings”*** has the meaning specified in the Preliminary Statements hereto.

***“Charges”*** means the security interests and charges granted over the Property of the Credit Parties pursuant to the DIP Financing Orders having the priority set out in the DIP Financing Orders.

***“CIT”*** means CIBC Asset Based Lending Inc. (formerly named CIT Business Credit Canada Inc.).

***"CIT DIP Charge"*** means the court-ordered charge in the principal amount of \$8,000,000 plus interest, fees and expenses over the Property of each of the Credit Parties to secure all amounts owing by the Credit Parties to CIT under the CIT DIP Facility, having the priority set out in the DIP Financing Orders.

***"CIT DIP Documents"*** means, collectively, the CIT Financing Agreement and all other documents, instruments and agreements entered into by any Credit Party in connection with the CIT Financing Agreement and the CIT DIP Facility.

***"CIT DIP Facility"*** means all advances, including letters of credit, made by CIT to the Credit Parties from and after April 28, 2010 under the CIT Financing Agreement by way of a debtor-in-possession letter of credit facility, up to the maximum principal amount of \$8,000,000.

***"CIT Financing Agreement"*** means the Second Amended and Restated Financing Agreement dated as of May 2, 2008 between the Borrower, the Guarantors, the lenders party thereto from time to time, as lenders, and CIT, as agent, as amended by amendment no. 1 dated as of September 22, 2008 and as further amended by amendment no. 2 dated as of April 28, 2010.

***"Collateral"*** means, in respect of each Credit Party, all present and future Property of such Credit Party subject to the Liens, privileges, priorities and security interests purported to be created by any Collateral Document and the DIP Charge.

***"Collateral Agent"*** has the meaning set forth in the Preliminary Statements hereto.

***"Collateral Documents"*** means, collectively, the DIP Financing Orders and any other security agreement, pledge agreement, mortgage or other documents delivered pursuant to Section 5.01(j) or otherwise that creates or purports to create a Lien in favour of the Collateral Agent for the benefit of the Secured Parties.

***"Commitment"*** means, with respect to any Lender at any time, the amount set forth opposite such Lender's name on Schedule I hereto under the caption "Commitment" or, if such Lender has entered into an Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Administrative Agent pursuant to Section 9.07 as such Lender's "Commitment."

***"Confidential Information"*** means any and all material non-public information delivered or made available by any Credit Party or any Subsidiary relating to any Credit Party or any Subsidiary or their respective businesses, other than any such information that is or has been made available publicly by a Credit Party or any Subsidiary.

***"Consolidated"*** refers to the consolidation of accounts in accordance with GAAP.

***"Courts"*** means, collectively, the U.S. Court and the CCAA Court, or any other court having jurisdiction over the Proceedings from time to time.

***"Credit Parties"*** means, collectively, the Borrower and the Guarantors.

***"D&O Charge"*** means the court-ordered charge for directors and officers in an aggregate amount not to exceed \$30,000,000 Canadian Dollars securing the Credit Parties' indemnity in favour of the directors and officers of the Credit Parties (as set forth more fully in paragraphs 24 and 25 of the Initial Order).

***“Debt”*** of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness of such Person for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under Capitalized Leases, (f) all obligations of such Person (other than pursuant to any employee benefit plan or incentive compensation plan) under acceptances, letter of credit or similar facilities, (g) all mandatory obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in cash in respect of any Equity Interests in such Person or any other Person or any warrants, rights or options to acquire such Equity Interests, valued, in the case of Redeemable Preferred Interests, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends, (h) all Guarantee Obligations of such Person and (i) all indebtedness and other payment Obligations referred to in clauses (a) through (i) above of another Person secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness or other payment Obligations.

***“Debtor Relief Laws”*** means the Bankruptcy Code, the CCAA, the BIA and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States, Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

***“Default”*** means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

***“Default Interest”*** has the meaning specified in Section 2.09.

***“DIP Commitment”*** means an amount up to \$25,000,000.

***“DIP Charge”*** means the court-ordered charge in the amount of \$25,000,000 over all of the Property of each of the Credit Parties to secure all Obligations, having the priority set out in the DIP Financing Orders.

***“DIP Facility”*** has the meaning specified in the Preliminary Statements hereto.

***“DIP Financing Orders”*** means collectively, the Initial Order, the US Orders and all other orders issued or to be issued by the Courts in connection with the Proceedings in respect of the DIP Facility, the DIP Charge and this Agreement.

***“Effective Date”*** has the meaning set out in the Preliminary Statements hereto.

***“Eligible Assignee”*** means (i) BAM; (ii) an Affiliate of BAM; (iii) an Approved Fund of BAM; (iv) the Initial Lenders; (v) an Affiliate of the Initial Lenders; (vi) an Approved Fund of the Initial Lenders; and (vii) any other Person (other than an individual) approved by the Required Lenders; provided, however, that neither any Credit Party nor any Affiliate of a Credit Party shall qualify as an Eligible Assignee under this definition; and provided, further, that no Person that is a competitor or

Affiliate of a competitor of the Credit Parties in the paper or forest products industry shall qualify as an Eligible Assignee under this definition.

***“Environmental Action”*** means any action, suit, demand, demand letter, claim, notice of noncompliance or violation, notice of liability or potential liability, investigation, proceeding, order or agreement (including any obligations to indemnify) relating in any way to any Environmental Law, any Environmental Permit, any Hazardous Material, or arising from alleged injury or threat to public health or safety or, employee health or safety, as such relates to exposure to Hazardous Material, or to natural resources or the environment, including, without limitation, (a) by any governmental or regulatory authority or third party for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

***“Environmental Law”*** means any applicable federal, state, provincial, municipal, local or foreign statute, law, ordinance, rule, regulation, code, order, writ, judgment, injunction or decree, or legally binding judicial or agency interpretation, relating to pollution or protection of the environment, public health or safety, as such relates to exposure to Hazardous Material, employee health or safety or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

***“Environmental Permit”*** means any permit, approval, identification number, license or other authorization required under any Environmental Law.

***“Equity Interests”*** means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized on any date of determination.

***“ERISA”*** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

***“ERISA Affiliate”*** means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Credit Party, or under common control with any Credit Party, within the meaning of Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

***“ERISA Event”*** means, except where such event has been approved by the U.S. Court in connection with the US Proceedings at the Effective Date, (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any ERISA Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of an ERISA Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such ERISA Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to an ERISA Plan; (c) the provision by the administrator of any ERISA Plan of a notice of intent to terminate such ERISA Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in

Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Credit Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by any Credit Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any ERISA Plan; or (g) the institution by the PBGC of proceedings to terminate an ERISA Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, such ERISA Plan.

***"ERISA Plan"*** means a Single Employer Plan or a Multiple Employer Plan.

***"Event of Default"*** has the meaning set forth in Section 7.01.

***"Excluded Property"*** means:

- (i) assets owned by a Subsidiary if 100% of the Equity Interests of such Subsidiary are not owned by one or more Credit Parties, and Equity Interests issued by any such Subsidiary to the extent that agreements with one or more other shareholders of such Subsidiary would prohibit the pledge of such Equity Interests to the Collateral Agent;
- (ii) any assets to the extent that, and for so long as, taking a security interest in such assets would violate any Applicable Law or regulation;
- (iii) any leasehold interests in real property;
- (iv) any equipment or other asset owned by a Credit Party that is subject to a purchase money lien or a Capitalized Lease obligation, if the contract or other agreement in which the Lien is granted (or the documentation providing for such Capitalized Lease obligation) prohibits or requires the consent of any Person other than such Credit Party as a condition to the creation of any other security interest on such equipment or asset;
- (v) any rights under any lease, contract or agreement to the extent that the granting of a security interest therein is specifically prohibited in writing by, or would constitute an event of default under or would grant a party a termination right under any agreement governing such right unless such prohibition is not enforceable or is otherwise ineffective under Applicable Law; provided, however, that this clause (v) shall not affect, limit, restrict or impair the grant by any Credit Party of a security interest in any Account, money or other amounts due and payable to any Credit Party or to become due and payable to any Credit Party under such lease, contract or agreement unless such Security Interest in such Account, money or other amount due and payable is also specifically prohibited by the terms of such lease, contract or agreement or such security interest in such Account, money or other amount due and payable or would expressly constitute an event of default under or would expressly grant a party a termination right under any such lease contract or agreement, in each case unless such prohibition is not enforceable or is otherwise ineffective under Applicable Law; provided, further, that notwithstanding anything to the contrary contained in the foregoing proviso, the security interests granted herein shall immediately attach to and the term "Collateral" shall immediately include the rights under any such lease, contract, or agreement and in such Account, money, or other amounts due and payable to any Credit Party at such time as such prohibition, event of default or termination right shall terminate or shall be waived; and
- (vi) any Avoidance Actions.

***"Excluded Taxes"*** means Income Taxes imposed directly on an Indemnified Party (or its members or shareholders) in respect of payments hereunder or under any other Loan Documents.

***"Fiscal Quarter"*** means any fiscal quarter of any Fiscal Year, which quarter shall end on or about the last day of each of March, June, September and December of such Fiscal Year in accordance with the fiscal accounting calendar of the Borrower and its Subsidiaries.

***"Fiscal Year"*** means a fiscal year of the Borrower and its Subsidiaries ending on December 31.

***"GAAP"*** means applicable generally accepted accounting principles, consistently applied.

***"GAAP Subsidiaries"*** means, with respect to the Borrower, all Persons which are required to be Consolidated with the Borrower in accordance with GAAP, including, without limitation, the Guarantors.

***"Governmental Authority"*** means any nation or government, any state, province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board, bureau or similar body, whether federal, state, provincial, territorial, local or foreign.

***"Guarantee Obligation"*** means, with respect to any Person, any obligation or arrangement of such Person to guarantee or intended to guarantee any Debt ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guarantee, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the primary obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement or (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof. The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

***"Guaranteed Obligations"*** has the meaning specified in Section 6.01.

***"Guarantee Supplement"*** has the meaning specified in Section 6.05.

***"Guarantors"*** means the Persons described in the Preliminary Statements together with each subsequently organized or acquired, direct and indirect wholly-owned Subsidiary of the Borrower and, as of the date of such requirement, each other Subsidiary that shall be required to execute and deliver a guarantee pursuant to Section 6.01.

***"Hazardous Materials"*** means (a) petroleum or petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, mold, greenhouse gases and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous, toxic, a contaminant or words of similar import under any Environmental Law.

***"Income Taxes"*** means taxes that are imposed on the overall net income (and franchise taxes imposed in lieu thereof) of any Person by the federal government of Canada or the province or foreign jurisdiction (or any political subdivision thereof) under the laws of which such Person is organized or in which it carries on business.

***"Indemnified Party"*** has the meaning specified in Section 2.17(a).

***"Initial Lender"*** means Brookfield and/or any of its Affiliates and Approved Funds.

***"Initial Order"*** has the meaning specified in the Preliminary Statements hereto.

***"Insurance and Condemnation Event"*** means the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective property or assets.

***"Interest Period"*** means the period commencing on the Borrowing Date and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is one (1), two (2) or three (3) months, as the Borrower may designate by delivery of notice received by the Administrative Agent not later than 2:00 p.m. (Toronto time) on the third (3rd) Business Day prior to the first day of such Interest Period, after the month in which the Borrowing Date occurs and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the numerically corresponding day (or if there is no corresponding day, the last day) in the calendar month that is one (1) month, two (2) months or three (3) months after the last day of the immediately preceding Interest Period; provided, however, that (A) if any Interest Period would end on a day that is not a LIBOR Business Day, such Interest Period shall be extended to the next succeeding LIBOR Business Day unless such next succeeding LIBOR Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding LIBOR Business Day, and (B) the final Interest Period shall end on or prior to the Maturity Date.

***"Inventory"*** has the meaning specified in the PPSA and the UCC, as applicable.

***"Investment"*** means, with respect to any Person, (a) any direct or indirect purchase or other acquisition (whether for cash, securities, property, services or otherwise) by such Person of, or of a beneficial interest in, any Equity Interests or Debt of any other Person, (b) any direct or indirect purchase or other acquisition (whether for cash, securities, property, services or otherwise) by such Person of all or substantially all of the property and assets of any other Person or of any division, branch or other unit of operation of any other Person, (c) any direct or indirect loan, advance, other extension of credit or capital contribution by such Person to, or any other investment by such Person in, any other Person (including, without limitation, (i) any arrangement by which one Person pays expenses of another Person and (ii) any arrangement pursuant to which the investor incurs indebtedness of the types referred to in clause (h) or (i) of the definition of ***"Debt"*** set forth in this Section 1.01 in respect of such other Person) and (d) any written agreement to make any Investment.

***"Issuing Bank"*** means the bank issuing Letters of Credit for the Borrower with the assistance of the Administrative Agent.

***"Lender Appointment Period"*** has the meaning specified in Section 8.07.

***"Lenders"*** means the Initial Lender, and any other Person that may become a Lender in accordance with Section 9.07 hereof for so long as such Initial Lender or Person, as the case may be, shall be a party to this Agreement.

***"Lending Office"*** means, with respect to any Lender, the office of such Lender specified as its "Lending Office" opposite its name on Schedule I hereto or in the Assignment and Acceptance pursuant to which it became a Lender, as the case may be, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

***"Letter of Credit"*** means one or more letters of credit or letters of guarantee issued or provided by the Administrative Agent, a Lender or an Issuing Bank for or on behalf of the Borrower in an aggregate amount up to but not exceeding the DIP Commitment in accordance with the terms of this Agreement.

***"Letter of Credit Fee"*** means, at any time, in respect of each Letter of Credit, a fee in an amount equal to the cost to the Lenders of arranging and maintaining the Letter of Credit plus 1.75% payable in accordance with the terms of this Agreement.

***"LIBOR"*** means, an interest rate per annum equal to the higher of (a) 3.00%, and (b) the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters LIBOR01 Page (or any successor page) as the London interbank offered rate for deposits in US Dollars at 11:00 a.m. (London time) two (2) Business Days before the first (1st) day of such Interest Period for a period equal to such Interest Period (provided that, if for any reason such rate is not available, the term "***LIBOR***" shall mean, for any Interest Period for all LIBOR Advances comprising part of the same Borrowing, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters LIBOR01 Page as the London interbank offered rate for deposits in US Dollars at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first (1st) day of such Interest Period for a term comparable to such Interest Period); provided, however, if more than one rate is specified on Reuters LIBOR01 Page, the applicable rate shall be the arithmetic mean of all such rates).

***"LIBOR Business Day"*** means a Business Day on which dealings in US Dollars are carried on in the London interbank market and on which commercial banks are open for business in London, United Kingdom.

***"LIBOR Loan"*** means, at any time, any Loan which is outstanding at such time and in respect of which interest is to be calculated based on LIBOR and "***LIBOR Loans***" means, at any time, all LIBOR Loans at such time.

***"Lien"*** shall mean, with respect to any property of any Person, any mortgage, lien, deed of trust, hypothecation, fiduciary transfer of title, assignment by way of security, pledge, charge, lease, sale and lease-back arrangement, easement, servitude, trust arrangement, or security interest or encumbrance of any kind in respect of such property, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any property of any kind (and a Person shall be deemed to own subject to a Lien any property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property).

**"Loan"** means, at any time and in respect of the DIP Facility, the principal amount of all Obligations then outstanding under the DIP Facility made by the Lenders to the Borrower pursuant to this Agreement.

**"Loan Documents"** means (i) this Agreement, (ii) the Notes, if any, (iii) the Collateral Documents, (iv) the DIP Financing Orders and (v) any other document, agreement or instrument executed and delivered by a Credit Party pursuant to the Loan Documents, in each case as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

**"Material Adverse Change"** means any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

**"Material Adverse Effect"** means a material adverse effect on (a) the business, financial or other condition, operations or properties of the Borrower and its Subsidiaries, taken as a whole, (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Administrative Agent or any Lender thereunder, (c) the ability of any Credit Party to perform its Obligations under any Loan Document to which it is or is to be a party, or (d) the amount which the Lenders would be likely to receive upon the liquidation of the Collateral.

**"Material Subsidiary"** means, at any time, a Subsidiary of the Borrower having assets in an amount equal to at least 5% of the amount of total Consolidated and combined assets of the Credit Parties and their respective Subsidiaries or revenues or net income in an amount equal to at least 5% of the amount of total combined revenues or net income of Credit Parties and their respective Subsidiaries.

**"Maturity Date"** means (i) six (6) months after the Effective Date if a Reorganization Plan has not been submitted to the CCAA Court, (ii) nine (9) months after the Effective Date if an approval order in form and substance satisfactory to the Required Lenders approving a Reorganization Plan has not been entered by the CCAA Court, (iii) 12 months following the Effective Date, (iv) the effective date of the Reorganization Plan of the Credit Parties or the emergence of the Credit Parties from the Proceedings, and (v) the acceleration of the Obligations and the termination of the Commitments in accordance with this Agreement.

**"Moody's"** shall mean Moody's Investors Service, Inc., or any successor organization thereto.

**"Monitor"** means PricewaterhouseCoopers Inc.

**"Multiemployer Plan"** means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Credit Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

**"Multiple Employer Plan"** means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Credit Party or any ERISA Affiliate and at least one Person other than the Credit Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Credit Party or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

***"Net Cash Proceeds"*** means, as applicable;

(a) with respect to any Asset Disposition, the gross cash proceeds received by any Credit Party therefrom less the sum of the following, without duplication: (i) selling expenses incurred in connection with such Asset Disposition (including reasonable brokers' fees and commissions, legal, accounting and other professional and transactional fees determined acceptable by the Required Lenders in their reasonable discretion, transfer and similar taxes and the Credit Party's reasonable good faith estimate of income taxes paid or payable in connection with such sale), (ii) the principal amount, premium or penalty, if any, interest and other amounts on any Debt (including, without limitation, Debt under the Existing Facilities) secured by a Lien having priority to the Lien of the Collateral Agent on the assets (or a portion thereof) sold in such Asset Disposition, which Debt is repaid with such proceeds, (iii) reasonable reserves with respect to post-closing adjustments, indemnities and other contingent liabilities established in connection with such Asset Disposition (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), and (iv) the Borrower's reasonable good faith estimate of cash payments required to be made within ninety (90) days of such Asset Disposition with respect to retained liabilities directly related to the assets (or a portion thereof) sold in such Asset Disposition (provided that, to the extent that cash proceeds are not used to make payments in respect of such retained liabilities within ninety (90) days of such Asset Disposition, such cash proceeds shall constitute Net Cash Proceeds);

(b) with respect to any Insurance and Condemnation Event, the gross cash proceeds received by the Borrower or any of its Subsidiaries therefrom less the sum of the following, without duplication: (i) all fees and expenses in connection therewith and (ii) the principal amount, premium or penalty, if any, interest and other amounts on any Debt secured by a first priority Lien on the assets (or a portion thereof) subject to such Insurance and Condemnation Event, which Debt is repaid in connection therewith; and

(c) with respect to any issuance of Debt for borrowed money, the gross cash proceeds received by the Borrower or any of its Subsidiaries therefrom less all legal, underwriting and other fees and expenses incurred in connection therewith.

***"Note"*** means a promissory note made by the Borrower in favour of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit B.

***"Notice of Borrowing"*** means a notice of a borrowing, in the form of Exhibit C hereto, specifying therein the requested (i) date of such Borrowing, (ii) the Type of Advance, (iii) aggregate amount of such Advance and (iv) in the case of a LIBOR Advance, the initial Interest Period for each such Advance.

***"Orders"*** means, collectively, the CCAA Orders, the US Orders and all other orders issued or to be issued by the U.S. Court in connection with the US Proceedings, and ***"Order"*** means any of the Orders.

***"Obligations"*** means all obligations, liabilities and Debt of a Credit Party to the Administrative Agent or any Lender with respect to the principal of and interest on the Advances and the payment or performance of all other obligations, liabilities and the Debt of such Credit Party to the Administrative Agent or any Lender hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Advances, including, without limitation, (i) all reimbursement and indemnity obligations of such Credit Party to the Administrative Agent or any Lender hereunder or in connection with any Letter of Credit or otherwise and (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party under

any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees, filing fees and any other sums chargeable to such Credit Party hereunder, under another Loan Document, or under any other agreement or instrument with the Administrative Agent, any Lender or Issuing Bank.

**"PBGC"** means the Pension Benefit Guarantee Corporation or any successor agency.

**"Permitted Liens"** means Liens expressly permitted under Section 5.02(a).

**"Permitted Payments"** means (i) payment of all current monthly accrued and unpaid interest at the non-default rate under the CIT Financing Agreement and the DIP Facility; (ii) current payment pursuant to the terms of the Orders (as applicable) of all reasonable legal fees and expenses incurred by the administrative agent under the CIT DIP Facility and the DIP Facility; (iii) all claims subject to the Administration Charge; (iv) payment of any amount required to be paid by the Orders; and (v) payment of any amount permitted, but not required, to be paid under the Orders, to the extent such payment is provided for in an approved Budget, as provided for herein, and provided no default or Event of Default is then continuing.

**"Person"** means any individual, partnership (whether general or limited), corporation (including a business trust), joint stock company, limited liability company, trust, estate, association, custodian, nominee, joint venture or other entity, or a government or any political subdivision or agency thereof.

**"Post-Petition Interest"** has the meaning specified in Section 6.06.

**"PPSA"** means *Personal Property Security Act* (Ontario) or any successor statute or similar legislation of any other Canadian jurisdictions, including the provisions of the Civil Code of Quebec of general application of taking security in movable property in the province of Quebec.

**"Prepetition Debt"** means all other Debt of the Credit Parties outstanding immediately prior to the commencement of the Proceedings.

**"Proceedings"** has the meaning specified in the Preliminary Statements hereto.

**"Property"** means any interest in any kind of property or asset, whether real (including chattels real), personal or fixed, movable or immovable, tangible or intangible.

**"Reimbursement Obligations"** means, at any date, the sum of the outstanding obligations of the Borrower to reimburse the Administrative Agent at such time to the extent that the Administrative Agent is obligated to reimburse the Issuing Bank at such time pursuant to any Letter of Credit.

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

**"Reorganization Plan"** means one or more plans of compromise or arrangement under the CCAA in respect of the Credit Parties, as recognized by the U.S. Court in the US Proceedings, as amended, modified, varied, or restated from time to time, in each case in form and substance acceptable to the Lenders in their sole discretion.

**"Repayment Notice"** means a repayment notice in the form of Exhibit E hereto.

***“Required Lenders”*** means, at any time, Lenders owed or holding more than 50% of the sum of the Commitment and for so long as Brookfield, together with any of its Affiliates or Approved Funds, hold not less than 20% of the Commitments, Brookfield.

***“Responsible Officer”*** means the chief executive officer, president, chief financial officer, chief restructuring officer, controller, secretary or treasurer of a Credit Party or any Person exercising managerial responsibilities equivalent to the foregoing. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party.

***“Secured Parties”*** means the Administrative Agent, the Collateral Agent and the Lenders.

***“Secured Obligations”*** means the Obligations of the Credit Parties secured by the Loan Documents, as applicable.

***“Single Employer Plan”*** means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Credit Party or any ERISA Affiliate and no Person other than the Credit Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Credit Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

***“Standard & Poor’s”*** or ***“S&P”*** shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor organization thereto.

***“Stay of Proceedings”*** means the stay of proceedings against each of the Credit Parties and its Property and the stay of the exercise of rights and remedies against each of the Credit Parties and its Property contained in any of the Orders, in each case as it may be extended or amended by any other Order.

***“Subordinated Obligations”*** has the meaning specified in Section 6.06.

***“Subsidiary”*** of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time Equity Interests of any other class or classes of such Person shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

***“Term Sheet”*** has the meaning specified in the Preliminary Statements hereto.

***“Type”*** refers to the distinction between Base Rate Advances and LIBOR Advances.

***“UCC”*** means the Uniform Commercial Code as in effect, from time to time, in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a

jurisdiction other than the State of New York, “*UCC*” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“*U.S. Court*” has the meaning specified in the Preliminary Statements hereto.

“*US Dollars*” and “\$” each mean lawful currency of the United States of America.

“*U.S. Orders*” means, collectively, the US TRO Order, the US Preliminary Injunction Order, the US Recognition Order and all other orders issued by the U.S. Court in connection with the US Proceedings.

“*US Preliminary Injunction Order*” means the order of the U.S. Court issued on June 26, 2009 granting emergency authority to the Borrower to borrow under the DIP Facility, granting the Lenders super-priority liens and claims securing such borrowings, and authorizing the Stay of Proceedings.

“*US Proceedings*” has the meaning specified in the Preliminary Statements hereto.

“*US Recognition Order*” means the order of the U.S. Court granted on July 13, 2009, *inter alia*, recognizing the CCAA Proceeding as a foreign proceeding, recognizing the Initial Order, granting the DIP Charge and granting relief under Chapter 15 of the Bankruptcy Code.

“*US TRO Order*” means the order of the U.S. Court issued on June 26, 2009 granting emergency authority to the Borrower to borrow under the DIP Facility, granting super-priority liens and claims securing such borrowings, and authorizing the Stay of Proceedings.

“*Voting Interests*” means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

“*Withdrawal Liability*” has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

**SECTION 1.02 Interpretation.** As used in this Agreement, the words “*include*”, “*includes*” and “*including*” will be deemed to be followed by “*without limitation*”. Pronouns in masculine, feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “*this Agreement*”, “*herein*”, “*hereof*”, “*hereby*”, “*hereunder*” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

## **ARTICLE II**

### **THE FACILITY**

**SECTION 2.01 The Facility.** Subject to the terms and conditions of this Agreement, the Initial Lender has established the DIP Facility in favour of the Borrower up to the amount of the DIP Commitment. The DIP Facility shall be available by way of Advances of (i) Base

Rate Loans in US Dollars; (ii) LIBOR Loans; and (iii) Letters of Credit in US Dollars as the Borrower may request in accordance herewith. The Borrower may increase or decrease the Obligations under the DIP Facility by making drawdowns, repayments and further drawdowns.

**SECTION 2.02 Availability.** Advances on the DIP Facility may be made on a revolving basis on or after the Effective Date and prior to (i) the Maturity Date, or (ii) any default or Event of Default, up to the amount of the DIP Commitment.

**SECTION 2.03 Advances under DIP Facility.** Each request by the Borrower for an Advance under the DIP Facility shall be made by the delivery of a duly completed and executed Notice of Borrowing or other form of notice acceptable to the Lender in its sole discretion to the Administrative Agent before 1:00 p.m. (Toronto time) on the Banking Day immediately preceding the proposed Borrowing Date. Any request in respect of a proposed Advance shall be irrevocable and binding on the Borrower. All Advances shall be in an amount which is an integral multiple of \$100,000.

**SECTION 2.04 Repayment of the Loans.** The Borrower shall repay on the Maturity Date the principal amount of the Loans then outstanding in full, together with all interest and other amounts required to be paid with respect thereto pursuant to and in accordance with this Agreement.

**SECTION 2.05 Voluntary Prepayment of the Loans.** The Borrower may, upon at least five (5) Business Days' notice (or such shorter notice period agreed by the Lenders) to the Administrative Agent, stating the proposed date and the aggregate principal amount of the prepayment, prepay the outstanding principal amount of the Loans in whole or in part, together with all interest and other amounts required to be paid pursuant to Section 2.10(c) and Section 2.14 in connection with such prepayment. Such prepayment shall be made by delivery of a Repayment Notice to the Administrative Agent or other form of notice acceptable to the Lender in its sole discretion.

**SECTION 2.06 Mandatory Prepayment of the Loans.** Subject to the Orders, each Credit Party shall, within three (3) Business Days of receipt of Net Cash Proceeds arising from (i) any Asset Disposition in respect of a sale or other disposition of any Property of any of the Credit Parties (including any sale of any Equity Interests in any of the Credit Parties) but excluding any Asset Disposition permitted by clauses (i) or (iii) of Section 5.02(h), (ii) any Insurance and Condemnation Event with respect to any Property of any of the Credit Parties, or (iii) no later than one (1) Business Day following the date of receipt of any Credit Party, the incurrence of Debt for borrowed money by any of the Credit Parties in excess of \$5,000,000 (other than Debt permitted by Section 5.02(b)), immediately pay or cause to be paid to the Administrative Agent for the account of the Lenders an amount equal to 100% of such Net Cash Proceeds; provided, however, that, so long as no Event of Default shall be continuing, any Credit Party may (A) with respect to any Net Cash Proceeds received in connection with the sale of any equipment in the ordinary course of business, upon any such receipt, reinvest such Net Cash Proceeds to acquire replacement equipment within the earlier of (i) the Maturity Date and (ii) 90 days following the date of receipt of such Net Cash Proceeds and (B) with respect to any Net Cash Proceeds received in connection with any Insurance and Condemnation Event, upon any such receipt, reinvest such Net Cash Proceeds to replace or repair the property or assets lost or damaged, in each case; provided, further, that no repayment shall be required hereunder as a result of any Net Cash Proceeds received by a Subsidiary that is not wholly-owned except to the extent such Net Cash Proceeds are distributed to the Borrower or a wholly-owned Subsidiary of the Borrower.

**SECTION 2.07 Scheduled Interest.** The Borrower shall pay interest on the unpaid principal amount of the Loans from the Borrowing Date until such principal amount shall

be paid in full, in arrears monthly, and (with respect to LIBOR Loans) at the end of each Interest Period, as follows:

- (a) Base Rate Loans. During such periods as such Loan is a Base Rate Loan, a rate per annum equal at all times to the sum of (i) the Base Rate in effect from time to time plus (ii) the Applicable Margin in effect from time to time.
- (b) LIBOR Loans. During such periods as such Loan is a LIBOR Loan, a rate per annum equal at all times during each Interest Period for such Advance to the sum of (i) LIBOR for such Interest Period for such Loan plus (ii) the Applicable Margin in effect on the first day of such Interest Period.

#### SECTION 2.08 Conversion of Loans.

- (a) The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than 11:00 a.m. (Toronto time) on the third (3rd) Business Day prior to the date of the proposed conversion and subject to the provisions of Section 2.07 and Section 2.15, convert all or any portion of the Loans of one Type comprising the same Borrowing into Loans of the other Type; provided, however, that any conversion of LIBOR Loans into Base Rate Loans shall be effective only on the last day of an Interest Period for such LIBOR Loans. Each such notice of conversion shall, within the restrictions specified above, specify (i) the date of such conversion, (ii) the Loans to be converted and (iii) if such conversion is into LIBOR Loans, the duration of the initial Interest Period for such Loans. Each notice of conversion shall be irrevocable and binding on the Borrower.
- (b) If the Borrower shall fail to select the duration of any Interest Period for any LIBOR Loan, in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Administrative Agent will forthwith so notify the Borrower and the Lenders, whereupon each such LIBOR Loan will automatically, on the last day of the then existing Interest Period therefor, convert into a Base Rate Loan.
- (c) Upon the occurrence and during the continuance of an Event of Default, (x) each LIBOR Loan will automatically, on the last day of the then existing Interest Period therefor, convert into a Base Rate Loan and (y) the obligation of the Lenders to make, or to convert Loans into, LIBOR Loans shall be suspended.

#### SECTION 2.09 Default Interest.

- (a) Upon the occurrence and during the continuance of an Event of Default, the Borrower shall pay interest ("Default Interest") on (i) the unpaid principal amount of the Loans, payable in arrears on the dates referred to in Section 2.07 and on demand, at a rate per annum equal at all times to 2% per annum above the applicable rate per annum required to be paid pursuant to Section 2.07 and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the applicable rate per annum required to be paid pursuant to Section 2.07.
- (b) Anything set forth in this Agreement to the contrary notwithstanding, in no event shall the rate of interest payable by the Borrower on any amount hereunder cause the total amount of interest payable on the principal amount of the Loans to exceed the maximum amount permitted by Applicable Law.

### SECTION 2.10 Payments and Computations; Additional Amounts.

(a) Computations of Interest. All computations of interest based on the Base Rate shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, and all computations of interest based on LIBOR and fees shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Agent's Account. The Borrower shall make each payment hereunder no later than 11:00 a.m. (Toronto time) on the day when due in immediately available US Dollars, to such account of the Administrative Agent as the Administrative Agent shall have notified the Borrower, for the ratable account of the Lenders.

(c) Additional Amounts. All payments of principal with respect to the Loans under this Agreement (whether at maturity, on prepayment or otherwise) shall be made together with (without duplication) (i) all accrued interest thereon to the date of such payment or prepayment on the principal amount paid or prepaid and (ii) any and all costs and expenses then due and owing hereunder pursuant to this Agreement.

(d) Notice. Each unscheduled payment under this Agreement shall be accompanied by written notice from the Borrower identifying the nature of the payment.

(e) Interest Act (Canada). Whenever a rate of interest hereunder is calculated on the basis of a year (the "*deemed year*") which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act (Canada)* by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

### SECTION 2.11 Letters of Credit. The Letters of Credit shall have the following terms:

(a) Within the limits of the Commitments and the limitations contained in this Agreement, the Lenders agree to use commercially reasonable efforts to provide or the Administrative Agent agrees to use commercially reasonable efforts to assist the Borrower in obtaining Letters of Credit from an Issuing Bank containing the terms requested, denominated in US Dollars and, in an amount not to exceed the DIP Commitment less the amount of all other Obligations outstanding at any time and from time to time. The Administrative Agent's assistance for amounts in excess of the limitations set forth herein shall at all times and in all respects be in the Administrative Agent's sole discretion. The term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be acceptable to the Administrative Agent in its sole discretion.

(b) The Borrower shall satisfy Reimbursement Obligations promptly as they arise by way of a request for an Advance and all Loans made hereunder to satisfy the Reimbursement Obligations in respect of any Letter of Credit shall be remitted by the Administrative Agent to the Issuing Bank in accordance with such Letter of Credit (unless the Issuing Bank has already been fully reimbursed directly by the Borrower in respect of drawings under the Letter of Credit which is the subject of such Letter of Credit).

(c) If the Borrower fails to promptly satisfy the Reimbursement Obligations, the Borrower unconditionally and irrevocably authorizes the Administrative Agent and the Lenders to pay the amount of any demand made on the Administrative Agent or the Lenders under, in accordance with the terms of, pursuant to or in respect of any Letter of Credit provided by the Administrative Agent, the Lenders or the Issuing Bank on demand without requiring proof of the Borrower's agreement that the amount so demanded was due and notwithstanding that the Borrower may dispute the validity of any such demand or payment. Upon any such payments made to the Issuing Bank under a Letter of Credit, the Administrative Agent shall acquire by subrogation, any rights, remedies, duties or obligations granted or undertaken by the Borrower to the Issuing Bank in any application for Letters of Credit, any standing agreement relating to Letters of Credit or otherwise, all of which shall be deemed to have been granted to the Administrative Agent and apply in all respects to the Administrative Agent and shall be in addition to any rights, remedies, duties or obligations contained herein.

(d) The Administrative Agent and the Lenders shall have the right, without notice to the Borrower, to charge the Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Administrative Agent or the Lenders under the Letters of Credit at the earlier of: (i) payment by the Administrative Agent or the Lenders under the Letters of Credit; or (ii) the occurrence and continuance of an Event of Default. Any amount so charged to the Borrower's loan account shall: (x) be deemed to constitute a Base Rate Loan under this Agreement; (y) incur interest at the applicable rates provided hereunder; and (z) be due and payable in accordance with the terms of this Agreement.

(e) The Borrower unconditionally indemnifies and saves each of the Administrative Agent and the Lenders harmless against any and all losses, costs, damages, expenses, claims, demands or liabilities which it may suffer or incur arising in any manner whatsoever in connection with any transaction or occurrence relating to the Letters of Credit established or opened for the Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all obligations, liabilities or claims thereunder. This indemnity shall survive the termination of this Agreement.

(f) Neither the Administrative Agent nor any of the Lenders shall have any responsibility or liability for, or duty to inquire into, the authorization, execution, signature, endorsement, correctness, genuineness or legal effect of any certificate or other document presented to them pursuant to any Letter of Credit and the Borrower fully and unconditionally assumes all risks with respect to the same and, without limiting the generality of the foregoing, all risks of the acts or omissions of any beneficiary of any Letter of Credit with respect to the use by any beneficiary of any Letter of Credit.

(g) Neither the Administrative Agent nor any of the Lenders shall be responsible for:

(i) the validity of certificates or other documents delivered under or in connection with any Letter of Credit that appear on their face to be in order, even if such certificates or other documents should in fact prove to be invalid, fraudulent or forged;

(ii) errors, omissions, interruptions or delays in transmission or delivery of any messages by mail, cable, telegraph, telefax or otherwise, whether or not they are in code;

(iii) errors in translation or for errors in interpretation of technical terms or for errors in the calculation of amounts demanded under any Letter of Credit;

(iv) any failure or inability by the Administrative Agent, any Lender, the Issuing Bank or anyone else to make payment under any Letter of Credit as a result of any

Applicable Law or by reason of any control or restriction rightfully or wrongfully exercised by any person asserting or exercising governmental or paramount powers; or

(v) any other consequences arising in respect of a failure by the Administrative Agent or any Lenders or the Issuing Bank to honour a Letter of Credit due to causes beyond the control of the Administrative Agent, such Lender or such Issuing Bank;

and none of the above shall affect or impair any of the rights or powers of the Administrative Agent or any Lender hereunder or the obligations of the Borrower under this Agreement. In furtherance and not in limitation of the foregoing provisions, it is agreed that any payment made by the Administrative Agent or any Lender in good faith under and in accordance with the terms of a Letter of Credit shall be binding upon the Borrower and shall not result in any liability of the Administrative Agent or any Lender to the Borrower and shall not lessen the obligations of the Borrower under this Agreement.

**SECTION 2.12 Evidence of Debt.** The Administrative Agent shall maintain an account or accounts evidencing the indebtedness of the Borrower to each Lender with respect to the Loan and this Agreement, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder; provided that the failure to so maintain any such account shall not impair any obligation of the Borrower to such Lender. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

**SECTION 2.13 Use of Proceeds.** The proceeds of the Loans shall be available (and the Borrower agrees that it shall use such proceeds) solely (i) to pay transaction costs, fees and expenses, which are incurred in connection with this Agreement, (ii) for working capital purposes, and (iii) for other general corporate purposes of the Borrower and its Subsidiaries, provided, however, that the proceeds of the Loans shall not be used to repay Prepetition Debt, except as permitted in the Initial Order.

**SECTION 2.14 Fees.**

(a) **Standby Fees.** The Borrower shall pay standby fees (the "*Standby Fees*") to each Lender making a Commitment on the unused portion of such Commitment. The standby fee will be calculated daily at the rate of 1.00% per annum and will be payable quarterly in arrears on the first (1st) Business Day of the following quarter.

(b) **Letter of Credit Fees.** The Borrower shall pay the Letter of Credit Fees to the Administrative Agent for the account of each Lender rateably in accordance with each Lender's Applicable Percentage with respect to the provision of such Letter of Credit. All such Letter of Credit Fees shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first (1st) Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be); provided that all Letter of Credit Fees, together with all Standard Letter of Credit Fees (as defined below), accruing after the date on which the Commitments terminate shall be payable on demand. All Letter of Credit Fees payable pursuant to this Section 2.14(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrower also agrees to pay to the Administrative Agent, for the account of the Issuing Bank, the Issuing Bank's standard fees (the "*Standard Letter of Credit Fees*") with respect to the administration, handling,

amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such standard fees shall be payable within three (3) days after demand by the Administrative Agent or the Issuing Bank. It is acknowledged and agreed by the Lenders that the Issuing Bank may charge fees and other amounts directly to the Administrative Agent as a condition to issuing Letters of Credit and such fees and other amounts, to the extent that the Administrative Agent has not been reimbursed therefor by the Borrower, shall be charged by the Administrative Agent against each Lender's rateable share (taking into account each such Lender's Applicable Percentage) of other amounts owing from the Administrative Agent to each Lender (including, without limitation, each such Lender's rateable share of Letter of Credit Fees).

(c) **Exit Fees.** The Borrower shall pay fees (the "*Exit Fees*") to each Lender in an amount equal to 1.00% of its Commitment under the DIP Facility, earned on the Effective Date and payable to such Lender upon the earlier of (i) the Maturity Date and (ii) repayment in full of the Obligations and cancellation of the DIP Facility. The Exit Fees shall be non-refundable once paid.

**SECTION 2.15 Increased Costs, Etc.** If, after the date hereof, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or of making, funding or maintaining a LIBOR Loan or a Letter of Credit (excluding, for purposes of this Section 2.15, any such increased costs resulting from (x) Taxes or Other Taxes (as to which Section 2.16 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Lending Office or any political subdivision thereof), then the Borrower shall from time to time, within two (2) Business Days of demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that a Lender claiming additional amounts under this Section 2.15 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost that may thereafter accrue and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Borrower by such Lender, shall be conclusive and binding for all purposes, absent manifest error. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's right to demand such compensation.

**SECTION 2.16 Break Funding Payments.** In the event of (a) the failure by the Borrower to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered by the Borrower pursuant hereto, or (b) the payment or conversion of any principal of any LIBOR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), or (c) the prepayment or conversion of any LIBOR Loan other than on the last day of the Interest Period applicable thereto, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section Section 2.16 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

#### **SECTION 2.17 Taxes.**

(a) Except as otherwise provided herein, any and all payments by any Credit Party to or for the account of any Lender or the Administrative Agent (each an "*Indemnified Party*") hereunder or

under any other Loan Document shall be made, in accordance with Section 2.10 or the applicable provisions of such other Loan Document, if any, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding in the case of each Indemnified Party, Excluded Taxes (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings being hereinafter referred to as "*Taxes*"). If any Credit Party shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document to any Indemnified Party (i) the sum payable by such Credit Party shall be increased as may be necessary so that after all required deductions (including deductions applicable to additional sums payable under this Section 2.17) such Indemnified Party receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Credit Party shall make all such deductions and (iii) such Credit Party shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with Applicable Law.

(b) In addition, each Credit Party shall pay any present or future sales stamp, documentary, excise, property, intangible, mortgage recording or similar taxes, charges or levies that arise from any payment made by such Credit Party hereunder or under any other Loan Documents or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as "*Other Taxes*").

(c) The Credit Parties shall indemnify each Indemnified Party for and hold them harmless on an after-tax basis against the full amount of Taxes and Other Taxes (including, without limitation, Taxes of any kind imposed on or paid by such Indemnified Party) and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor, which written demand shall be accompanied by copies of the applicable documentation evidencing the amount of such taxes.

(d) Within 30 days after the date of any payment of Taxes, the appropriate Credit Party shall furnish to the Administrative Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment, to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Initial Lenders. In the case of any payment hereunder or under the other Loan Documents by or on behalf of a Credit Party through an account or branch outside Canada or by or on behalf of a Credit Party by a payor that is not a Canadian resident person, if such Credit Party determines that no Taxes are payable in respect thereof, such Credit Party shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at such address, an opinion of counsel acceptable to the Administrative Agent stating that such payment is exempt from Taxes. For purposes of subsections (d) and (e) of this Section 2.17, the term "*Canadian resident person*" shall have the meaning specified in the *Income Tax Act* (Canada).

(e) If any Lender determines, in its sole discretion, that it has actually and finally realized by reason of the refund or credit (but not any foreign tax credits) of any Taxes indemnified pursuant to this Section 2.17, a current monetary benefit that would result in the total payments under this Section 2.17 exceeding the amount needed to fully indemnify such Lender on an after-tax basis, such Lender shall pay to the Borrower or other Credit Party, as appropriate, with reasonable promptness, an amount equal to the lesser of the amount of such benefit or the amount of such excess, net of all expenses in securing such refund.

**SECTION 2.18 Sharing of Payments, Etc.** If any Lender shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, other than as a result of an assignment pursuant to Section 9.07 other than to a Credit Party as

assignee (i) on account of Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Obligations due and payable to such Lender at such time to (y) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (ii) on account of Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Obligations owing to such Lender at such time to (y) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, such Lender shall forthwith purchase from the other Lenders such interests or participating interests in the Obligations due and payable or owing to them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each other Lender shall be rescinded and such other Lender shall repay to the purchasing Lender the purchase price to the extent of such Lender's ratable share (according to the proportion of (x) the purchase price paid to such Lender to (y) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (x) the amount of such other Lender's required repayment to (y) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Credit Parties agree that any Lender so purchasing an interest or participating interest from another Lender pursuant to this Section 2.18 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such interest or participating interest, as the case may be, as fully as if such Lender were the direct creditor of the Credit Parties in the amount of such interest or participating interest, as the case may be.

**SECTION 2.19 Judgment Currency.** If for the purpose of obtaining judgment in any court it is necessary to convert all or any part of the liabilities or any other amount due to the Administrative Agent or any Lender in respect of any of the Obligations in any currency (the "*Original Currency*") into another currency (the "*Other Currency*"), each Credit Party, to the fullest extent that it may effectively do so, agrees that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent or such Lender could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied. The obligations of the Credit Party in respect of any sum due in the Original Currency from it to the Administrative Agent or such Lender shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Lender of any sum adjudged to be so due in such Other Currency the Administrative Agent or such Lender may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to Administrative Agent or such Lender in the Original Currency, each Credit Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Administrative Agent or such Lender in the Original Currency, the Administrative Agent or such Lender agree to remit such excess to the relevant Credit Party.

## ARTICLE III

### CONDITIONS TO ADVANCES

**SECTION 3.01 Conditions Precedent to each Borrowing.** The several obligations of each Lender to make a Loan on the occasion of each Borrowing shall be subject to the conditions precedent that on the date of such Borrowing the following statements shall be true (and each of the giving of the applicable Notice of Borrowing and the acceptance by the Borrower of the proceeds of such Borrowing, shall constitute a representation and warranty by the Borrower that both on the date of such notice and on the date of such Borrowing such statements are true):

- (a) the representations and warranties contained in each Loan Document, are true and correct in all material respects, before and after giving effect to such Borrowing and to the application of the proceeds therefrom, as though made on and as of such date, other than any such representations or warranties that, by their terms, refer to a specific date other than the date of such Borrowing, in which case as of such specific date;
- (b) no event has occurred and is continuing, or would result from such Borrowing or from the application of the proceeds therefrom that constitutes a Default in respect of the DIP Facility or the CIT DIP Facility;
- (c) the Borrower is in compliance in all respects with the Orders;
- (d) the Maturity Date has not occurred; and
- (e) no Material Adverse Change has occurred with respect to any of the Credit Parties or the business of any of the Credit Parties since the date of the issuance of the Initial Order.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**SECTION 4.01 Representations and Warranties of the Credit Parties.** Each Credit Party represents and warrants as follows:

(a) Each of the Borrower and the Guarantors: (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified and in good standing in each jurisdiction in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect; (ii) subject to the DIP Financing Orders, has the requisite power and authority to effect the transactions contemplated hereby, and by other Loan Documents to which it is a party; and (iii) subject to the entry of the DIP Financing Orders, has all requisite power and authority and the legal right to own, operate, pledge or mortgage its Property, and to conduct its business as now or currently proposed to be conducted except where the failure thereof would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Subject to the DIP Financing Orders, the execution, delivery and performance by each of the Borrower and the Guarantors of each of the Loan Documents to which it is a party: (i) are within the respective powers of each of the Borrower and the Guarantors, have been duly authorized by all necessary action including the consent of shareholders where required, and do not (A) contravene the charter or other organizational documents or by-laws of any of the Borrower or the Guarantors, (B) violate any law or regulation, or any order or decree of any court or Governmental Authority,

(C) conflict with or result in a breach of, or constitute a default under, any material indenture, mortgage or deed of trust entered into after the CCAA Filing Date or any material lease, agreement or other instrument entered into after the CCAA Filing Date binding on the Borrower or the Guarantors or any of their Property, except to the extent that all such violations, conflicts or breaches would not, in the aggregate, reasonably be expected to have a Material Adverse Effect, or (D) result in or require the creation or imposition of any Lien upon any of the Property of any of the Borrower or the Guarantors other than the Liens granted pursuant to this Agreement, other Loan Documents or the DIP Financing Orders, and (ii) do not require the consent, authorization by or approval of or notice to or filing or registration with any Governmental Authority other than the entry of the DIP Financing Orders (other than consents, authorizations, approvals, notices, filings or registrations the failure of which to have been obtained would not, in the aggregate, reasonably be expected to have a Material Adverse Effect). Upon the entry by the Courts of the DIP Financing Orders, this Agreement has been duly executed and delivered by each of the Borrower and the Guarantors. This Agreement is, and each of the other Loan Documents to which the Borrower and each of the Guarantors is or will be a party, when delivered hereunder or thereunder, will be, a legal, valid and binding obligation of the Borrower and each Guarantor, as the case may be, enforceable against the Borrower and the Guarantors, as the case may be, in accordance with its terms and the DIP Financing Orders.

(c) The applicable Budget and all projected Consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries delivered to the Administrative Agent and Brookfield pursuant to Section 5.03 were prepared and will be prepared, as applicable, in good faith on the basis of the assumptions stated therein, which assumptions were fair and will be fair in the light of conditions existing at the time of delivery of such Budget or projections, as the case may be, and represented and will represent, at the time of delivery, the Borrower's good faith estimate of its future financial performance (it being understood that such projections are not a guarantee or warranty of future financial performance).

(d) There is no unstayed action, suit, or proceeding affecting any Credit Party or any of their Subsidiaries pending or, to the best knowledge of the Credit Parties, threatened before any court, governmental agency or arbitrator that (i) is reasonably expected to be determined adversely to the Credit Party and, if so adversely determined, would reasonably be expected to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document.

(e) No ERISA Event has occurred or is reasonably expected to occur with respect to any ERISA Plan that has resulted in or is reasonably expected to result in a Material Adverse Effect.

(f) The DIP Financing Orders and the Loan Documents create a valid and perfected security interest in the Collateral having the priority set forth in the DIP Financing Orders securing the payment of the Obligations. The Credit Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for Permitted Liens.

(g) Each Credit Party and each of its Subsidiaries has filed or caused to be filed all tax returns and reports (federal, state, local and foreign) which are required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, together with applicable interest and penalties, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Credit Party or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(h) Prior to the CCAA Filing Date, each Canadian Pension Plan is, and has been, established, registered, qualified, administered and invested, in material compliance with the terms thereof and all Applicable Law; and except as otherwise disclosed on Schedule 4.01(h), no Credit Party has received, within the last three (3) years, any notice from any Person questioning or challenging such compliance (other than in respect of any claim related solely to that Person), and no Credit Party has knowledge of any such notice from any Person questioning or challenging such compliance beyond the last seven (7) years. Except as otherwise disclosed on Schedule 4.01(h), all obligations under any Canadian Pension Plan (whether pursuant to the terms thereof or Applicable Law) prior to the CCAA Filing Date have been satisfied, and there are no outstanding defaults or material violations thereunder by any Credit Party nor does any Credit Party have knowledge of any default or material violation by any other party to any Canadian Pension Plan. Except as otherwise disclosed on Schedule 4.01(h), all contributions or premiums required to be paid to or in respect of each Canadian Pension Plan have been paid in a timely fashion in accordance with the terms thereof and all Applicable Law, and no taxes, penalties or fees are owing or exigible under any Canadian Pension Plan. There is no material proceeding, action, suit or claim (other than routine claims for benefits) pending or threatened involving any Canadian Pension Plan or its assets except as otherwise disclosed on Schedule 4.01(h). Except as otherwise disclosed on Schedule 4.01(h), no event has occurred prior to the CCAA Filing Date respecting any Canadian Pension Plan which would entitle any Person (without the consent of applicable Credit Party) to wind-up or terminate any Canadian Pension Plan, in whole or in part, or which could, reasonably be expected to adversely affect the tax status thereof. Any prior withdrawals or transfers of assets from any Canadian Pension Plan have complied, in all material respects, with the terms of the relevant Canadian Pension Plan, any funding arrangement in respect of the Canadian Pension Plan (including all predecessor documents thereto) and any Applicable Law.

(i) Each of the Credit Parties hereby represents, warrants and covenants that, except as otherwise expressly provided in this paragraph, the Obligations will be secured by valid and enforceable security interests in the Property, and that the DIP Facility and each Loan Document (x) shall at all times constitute a superpriority claim in the Proceedings with such priority and subject to such terms and conditions as set out in the Orders, as applicable.

(j) The Consolidated balance sheet of the Borrower and its GAAP Subsidiaries as at December 31, 2009, and the related Consolidated statements of income and cash flows of the Borrower and its GAAP Subsidiaries for the Fiscal Year then ended, which have been furnished to the Lenders present fairly the financial condition and results of operations of the Borrower and its GAAP Subsidiaries as of such dates and for such periods all in accordance with GAAP (subject to year-end adjustments and in the case of unaudited financial statements, except for the absence of footnote disclosure).

## **ARTICLE V** **COVENANTS OF THE CREDIT PARTIES**

**SECTION 5.01 Affirmative Covenants.** So long as any Loan shall remain unpaid or any Lender shall have any Commitment hereunder, each Credit Party will:

(a) **Corporate Existence.** Preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business except (i)(A) if in the reasonable business judgment of the Borrower or such Guarantor, as the case may be, it is in its best economic interest not to preserve and maintain such rights, privileges, qualifications, permits, licenses and franchises and the loss thereof is not materially disadvantageous to the Credit Parties, taken as a whole, and (B) such failure to preserve the same could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and (ii) as otherwise permitted by Section 5.02(h).

(b) Compliance with Laws. Comply with all laws, rules, regulations, orders and other requirements of any Governmental Authority applicable to it or its Property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(c) Insurance. Keep its insurable properties insured at all times, against such risks, including fire and other risks insured against by extended coverage, as is customary with companies of the same or similar size in the same or similar businesses (subject to deductibles and including provisions for self-insurance); and maintain in full force and effect public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any Property owned, occupied or controlled by the Borrower or any Guarantor, as the case may be, in such amounts and with such deductibles as are customary with companies of the same or similar size in the same or similar businesses and in the same geographic area and in each case with financially sound and reputable insurance companies (subject to provisions for self-insurance).

(d) Taxes. Pay and discharge and cause each of its Subsidiaries to pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its Property arising, or attributed to the period, after the CCAA Filing Date, before the same shall become in default, as well as all lawful claims for labour, materials and supplies or otherwise arising after the CCAA Filing Date which, if unpaid, would become a Lien or charge upon such Property or any part thereof; provided, however, that the Borrower and each Guarantor shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the (i) payment or discharge thereof shall be stayed pursuant to an Order, or (ii) the validity or amount thereof shall be contested in good faith by appropriate proceedings, in each case, if the Borrower and the Guarantors shall have set aside on their books adequate reserves therefor in conformity with GAAP.:

(e) Access to Books and Records.

(i) Maintain or cause to be maintained at all times true and complete books and records in accordance with GAAP of the financial operations of the Borrower and the Guarantors; and provide the Lenders and their representatives access to all such books and records during regular business hours upon reasonable advance notice, in order that the Lenders may examine and make abstracts from such books, accounts, records and other papers for the purpose of verifying the accuracy of the various reports delivered by the Borrower or the Guarantors to the Administrative Agent or the Lenders pursuant to this Agreement or for otherwise ascertaining compliance with this Agreement and to discuss the affairs, finances and condition of the Borrower and the Guarantors with the officers and independent accountants of the Borrower; provided that the Borrower shall have the right to be present at any such visit or inspection.

(ii) Grant the Lenders access to and the right to inspect all reports, audits and other internal information of the Borrower and the Guarantors relating to environmental matters upon reasonable advance notice, but subject to appropriate limitations so as to preserve attorney-client privilege.

(iii) At any reasonable time and from time to time during regular business hours, upon reasonable notice, permit the Lenders and/or any representatives designated by the Lenders (including any consultants, accountants, lawyers and appraisers retained by the Lenders) to visit the properties of the Borrower and the Guarantors to conduct evaluations, appraisals, environmental assessments and ongoing maintenance and monitoring in connection with the

Collateral and all related systems; provided that representatives of the Borrower shall have the right to be present at any such visit.

(f) Use of Proceeds. Use the proceeds of the Loan solely for the purposes, and subject to the restrictions, set forth in Section 2.13.

(g) Validity of Loan Documents. Object to any application made on behalf of any Credit Party or by any Person challenging the validity of any Loan Document or the applicability or enforceability of any Loan Document or which seeks to void, avoid, limit, or otherwise adversely affect the DIR Charge, the security interest created by or in any Loan Document or any payment made pursuant thereto.

(h) Additional Guarantors. Cause each Subsidiary that hereafter becomes party to a Proceeding to execute a Guarantee Supplement within three (3) days of becoming party thereto; provided, however, that notwithstanding the foregoing, no Subsidiary will be required to become or remain a Guarantor or provide or maintain a Lien on any of its assets as security for any of the Obligations (i) if such Subsidiary is not a wholly-owned Subsidiary or does not otherwise fall within the definition of "Guarantor"; or (ii) to the extent doing so would (x) result in any material adverse tax consequences or (y) be prohibited by any Applicable Law.

(i) Environmental Matters. Comply, and cause each of its Subsidiaries and all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew, and cause each of its Subsidiaries to obtain and renew, all Environmental Permits necessary for its operations and properties and conduct, and cause each of its Subsidiaries to conduct, any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, in each case to the extent the failure to so comply, obtain renew, remove or clean up would result in a Material Adverse Effect; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances.

(j) Further Assurances.

(i) Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, correct, and cause each of its Subsidiaries promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof.

(ii) Promptly upon reasonable request by the Administrative Agent, or any Lender through the Administrative Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments, including procuring any intercreditor agreements requested by the Lenders, as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by Applicable Law, subject any Credit Party's Property to the Liens now or hereafter required to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the

Collateral Documents and any of the Liens required to be created thereunder including the DIP Charge and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Credit Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

(iii) Each of the Credit Parties hereby authorizes the Collateral Agent to file PPSA and UCC financing statements naming such Credit Party as debtor and describing the collateral covered thereby as "all assets", "all personal property", or using a similarly broad collateral description, in such jurisdictions that the Collateral Agent deems necessary or appropriate.

(k) Maintenance of Properties, Etc. Maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, and will from time to time make or cause to be made all appropriate repairs, renewals and replacements thereof except where failure to do so would not have a Material Adverse Effect; provided that, this subsection (k) shall not prohibit the sale, transfer or other disposition of any such property consummated in accordance with the other terms of this Agreement.

(l) Compliance with Court Orders.

(i) The Credit Parties shall comply with all Orders issued by the CCAA Court or the U.S. Court in the Proceedings and none of the Orders shall have been reversed, modified, amended, stayed or vacated, in the case of any amendment or modification, without the prior written consent of the Required Lenders in their sole discretion. :

(ii) The Credit Parties shall provide prompt written notice to the Initial Lender in reasonable detail prior to (i) any purchase offer that any Credit Party or a Subsidiary may receive with respect to any material asset, (ii) any plan or proposal to sell or otherwise dispose of any material asset of the Credit Parties or their material Subsidiaries, and (iii) any plan or proposal for the issuance of indebtedness by any Credit Party or any Subsidiary thereof, and, in each case, at the request of the Initial Lender, additional details with respect to any such offer, plan or proposal, to the extent not prohibited by bona fide confidentiality requirements.

**SECTION 5.02 Negative Covenants.** So long as any Loan shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, no Credit Party will, at any time:

(a) Liens. Incur, create, assume or suffer to exist any Lien on any Property of the Borrower or any of its Subsidiaries now owned or hereafter acquired by any of the Borrower or the Guarantors, other than:

(i) Liens in favour of the Collateral Agent and the Secured Parties;

(ii) Liens in connection with Debt permitted to be incurred pursuant to Section 5.02(b)(v) so long as such Liens extend solely to the Property (and improvements and proceeds of such Property) acquired with the proceeds of such Debt or subject to the applicable Capitalized Lease;

(iii) Liens securing the Charges;

(iv) (A) purchase money Liens on equipment acquired or held by any Credit Party or any of its Subsidiaries in the ordinary course of its business to secure the purchase price of such equipment or Debt incurred solely for the purpose of financing the acquisition of such equipment or (B) Liens existing on such equipment at the time of its acquisition; provided, however, that in the case of each of clauses (A) and (B), (x) no such Lien shall extend to or cover any other property of any Credit Party or any of its Subsidiaries, and (y) the aggregate principal amount of Debt secured by any or all such Liens shall not exceed at any one time outstanding \$1,000,000;

(v) Liens in existence on the Effective Date with respect to each Credit Party or any Subsidiary of a Credit Party, in each case described on Schedule 5.02(a)(v); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional Property or type of asset, as applicable, beyond that in existence on the Effective Date;

(vi) Liens for taxes, assessments and other governmental charges or levies not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or which are being contested in good faith and by appropriate proceedings promptly instituted and diligently conducted if adequate reserves are maintained to the extent required by GAAP;

(vii) the claims of materialmen, mechanics, carriers, warehousemen, repairmen, processors or landlords for labor, materials, supplies, rentals or other similar Liens incurred in the ordinary course of business, unexercised rights of set off, in each case with respect to amounts not yet delinquent or that are bonded or being contested in good faith by appropriate legal proceedings promptly instituted and diligently conducted and for which a reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made;

(viii) Liens consisting of deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar legislation;

(ix) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Credit Party or Subsidiary, in each case granted in the ordinary course of business in favour of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Debt;

(x) purported Liens evidenced by the filing of precautionary UCC or PPSA financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(xi) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; and

(xii) Liens constituting encumbrances in the nature of zoning restrictions, easements (including reciprocal easement agreements), rights-of-way, municipal building and zoning ordinances and similar charges, utility agreements, covenants, reservations, restrictions,

encroachments, charges, encumbrances, or other similar restrictions, title defects or other irregularities that were not incurred in connection with and do not secure Debt and do not materially and adversely affect the use of the property encumbered thereby for the intended purposes and, which do not, in any case, impair (i) the use thereof in the ordinary conduct of business or (ii) the marketability or value of such property.

For greater certainty, the Administrative Agent and the Lenders are entering into this Agreement on the express understanding that no Credit Party will enter into, or permit any other Credit Party to enter into, any other credit arrangement which is secured in priority to or pari passu with the Obligations except as set forth herein.

(b) Debt. Contract, create, incur, assume or suffer to exist any Debt, or permit any of its Subsidiaries to contract, create, incur, assume or suffer to exist any Debt, except for:

(i) Debt (including Guaranteed Obligations) under this Agreement and the other Loan Documents;

(ii) Debt incurred prior to the CCAA Filing Date;

(iii) Debt arising from Investments among and between the Credit Parties that are permitted hereunder;

(iv) Debt in respect of netting services, customary overdraft protections and otherwise in connection with deposit accounts in the ordinary course of business;

(v) Debt with respect to Capitalized Leases and purchase money Debt (including any such Debt incurred to finance the acquisition, construction or improvement of any fixed or capital asset) in an aggregate amount not to exceed at any time \$5,000,000; and any refinancings, renewals and extensions of any such purchase money Debt;

(vi) Debt secured by the Charges under the Initial Order;

(vii) Debt owed to CIT under the CIT Financing Agreement and secured by the CIT DIP Charge up to a maximum principal amount of \$8,000,000; and

(viii) Debt of any of the Credit Parties as an account party in respect of trade letters of credit entered into in the ordinary course of business; provided that no such trade letter of credit shall be secured by any assets of any of the Credit Parties other than the assets being acquired or shipped pursuant to such letter of credit.

(c) Insolvency Claims. Subject to the DIP Financing Orders, incur, create, assume, suffer to exist or permit any claim that is pari passu with or senior to the Obligations, other than in accordance with the applicable DIP Financing Orders.

(d) Dividends; Capital Stock. Except to the extent contemplated by a Reorganization Plan which has been approved by the Lenders and sanctioned by the Courts, declare or pay, directly or indirectly, any dividends or make any other distribution, or payment, whether in cash, property, securities or a combination thereof, with respect to (whether by reduction of capital or otherwise) any shares of capital stock (or any options, warrants, rights or other equity securities or agreements relating to any capital stock) of any of the Credit Parties, or set apart any sum for the aforesaid purposes; provided that, so long as no Default has occurred and is then continuing:

(i) the Credit Parties or any of their Subsidiaries may make cash distributions or equity repurchases pursuant to employee benefit plans or incentive compensation plans, in each case to the extent such distributions constitute compensation to executives or employees of such Credit Party or of the applicable Subsidiary and in each case as approved by the applicable Court (whether or not such repurchase constitutes compensation); and

(ii) any Subsidiary of the Borrower may make distributions or pay dividends to the Borrower or any other Subsidiary of the Borrower that owns any Equity Interests in such Subsidiary and, in the case of a distribution or dividend by a Subsidiary that is not a wholly-owned Subsidiary, to each other owner of Equity Interests in such Subsidiary based on their relative ownership interests.

(e) Equity Issuances. Except to the extent contemplated by a Reorganization Plan which has been approved by the Lenders and sanctioned by the Courts, no Credit Party will authorize or issue any Equity Interests to any Person other than issuances of Equity Interests to such Credit Party or any other Credit Party.

(f) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favourable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, provided that no Default or Event of Default exists or will occur either prior to or after giving effect to any such transaction; (ii) transactions with another Credit Party; or (iii) transactions approved by Brookfield.

(g) Investments. Make or hold, or permit any of its Subsidiaries to make or hold, any Investment in any Person, except for:

(i) Investments existing on the Effective Date, as set forth on Schedule Section 5.02(g) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other material modification of the terms thereof;

(ii) Investments in cash and Cash Equivalents;

(iii) Investments by any Credit Party in any other Credit Party;

(iv) Investments (A) received in satisfaction or partial satisfaction thereof from financially troubled account debtors or in connection with the settlement of delinquent accounts and disputes with customers and suppliers, or (B) received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Subsidiary or in satisfaction of judgments;

(v) Investments (A) in the form of deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with current market practices, (B) in the form of extensions of trade credit in the ordinary course of business, and (C) in the form of prepaid expenses and deposits to other Persons in the ordinary course of business; and

(vi) Investments made after the Effective Date in any Subsidiary formed after the Effective Date so long as (A) such Subsidiary is a Guarantor hereunder and (B) the Borrower and its Subsidiaries comply with the applicable provisions of Section 5.02(i).

(h) Fundamental Changes; Acquisitions; Asset Dispositions. Take any of the following actions, or permit any of its Subsidiaries to do any of the foregoing: (x) wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, (y) purchase or otherwise acquire, whether in one transaction or a series of related transactions, all or substantially all of the assets of any Person (or any division thereof), or (z) make any Asset Disposition; other than, with respect to this sub-clause (z):

(i) the sale of inventory in the ordinary course of business;

(ii) the sale of obsolete, worn-out or surplus assets in the ordinary course of business that are no longer used or usable in the business of the Borrower or any of its Subsidiaries;

(iii) the transfer of assets to the Borrower or any wholly-owned Subsidiary (provided that, in the case of any such transfer of assets, (A) if the transferee of such assets is a Credit Party, such Credit Party shall not pay more than the fair market value of such assets (determined as of the date of the applicable transfer) and (B) if the transferor of such assets is a Credit Party, the transferee shall not pay less than the fair market value of such assets (determined as of the date of the applicable transfer));

(iv) the disposition of cash or Cash Equivalents; and

(v) the sale of the property and assets of FNHL associated with the business and operations of FNHL located in Gorham, New Hampshire pursuant to the asset purchase agreement between FNHL and MB Growth Partners II, LP dated as of May 21, 2010.

(i) Nature of Business. Modify or alter, or permit any of its Subsidiaries to modify or alter, in any material manner the nature and type of its business as conducted at or prior to the CCAA Filing Date or the manner in which such business is currently conducted, it being understood that sales permitted by Section 5.02(h) and discontinuing operations expressly identified as operations to be discontinued in the Budget shall not constitute such a material modification or alteration.

(j) Amendments of Constitutive Documents. Amend its constitutive documents, except for amendments that would not reasonably be expected to adversely affect the interests of the Lenders.

(k) Accounting Changes. Make or permit any changes in (i) accounting policies or reporting practices, except (x) as permitted or required under GAAP and (y) solely in the case of reporting practices, in connection with any reporting to the Courts as required under the Proceedings, or (ii) its Fiscal Year.

(l) Negative Pledge; Payment Restrictions Affecting Subsidiaries. Enter into or allow to exist, or allow any Subsidiary to enter into or allow to exist, any agreement prohibiting or conditioning the ability of the Borrower or any such Subsidiary to (i) create any Lien upon any of its Property or assets, (ii) make dividends to, or pay any indebtedness owed to, any Credit Party, (iii) make loans or advances to, or other investments in, any Credit Party, or (iv) transfer any of its assets to any Credit Party other than (A) any such agreement with or in favour of the Administrative Agent or the

Lenders; (B) any agreement setting forth customary restrictions on the subletting, assignment or transfer of any Property or asset that is a lease, license, conveyance or contract of similar property or assets; (C) any restriction or encumbrance imposed pursuant to an agreement that has been entered into by the Borrower or any Subsidiary for the disposition of any of its property or assets so long as such disposition is otherwise permitted under the Loan Documents; (D) any such agreement imposed in connection with consignment agreements entered into in the ordinary course of business; (E) customary anti-assignment provisions contained in any agreement entered into in the ordinary course of business; (F) any agreement in existence on the CCAA Filing Date and any assumption of any such agreement permitted hereunder so long as the terms or provisions in connection with any such assumption relating to liens are no more restrictive than the agreement in effect on the CCAA Filing Date, (G) such encumbrances or restrictions required by Applicable Law, in each case as in effect on the Effective Date and (H) the CIT DIP Facility.

(m) Prepayments, Amendments, Etc. of Debt. (i) Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Debt except (A) regularly scheduled or required repayments or redemptions of Debt permitted hereunder, (B) any prepayments or redemptions of Debt in connection with a refunding or refinancing of such Debt permitted by Section 5.02(b), (C) any repayments of Debt to the Borrower or its Subsidiaries that was permitted to be incurred under this Agreement, (D) any repayment of Debt under the CIT DIP Facility or the DIP Facility from proceeds of assets securing such CIT DIP Facility or the DIP Facility, to the extent allowed pursuant to and subject to the terms and conditions of an Order of the Courts, or (E) Permitted Payments, or (ii) amend, modify or change in any manner adverse to the Lenders any term or condition of any Debt.

(n) Sales and Lease Backs. Except as set forth on Schedule 5.02(n), become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any Property, whether now owned or hereafter acquired (i) which such Credit Party has sold or transferred or is to sell or transfer to any other Person (other than another Credit Party) or (ii) which such Credit Party intends to use for substantially the same purpose as any other Property which has been or is to be sold or transferred by a Credit Party to any Person (other than another Credit Party) in connection with such lease.

(o) Additional CIT DIP Documents. No Credit Party will enter into any CIT DIP Document or any amendment, restatement or modification thereof unless a true and complete copy thereof has been delivered to the Administrative Agent, and such document, instrument or agreement is in form and substance satisfactory to the Administrative Agent in its sole discretion.

(p) Reorganization Plan. The Credit Parties will not (and will not apply to any court of competent jurisdiction for authority to) file any Reorganization Plan in the Proceedings that does not provide for the repayment in full in cash on the implementation date thereof of all of the Obligations or that is not otherwise satisfactory to the Administrative Agent and the Lenders in their sole discretion.

(q) Professional Retainers. Except as previously disclosed in writing to the Administrative Agent, no Credit Party shall (i) enter into or make any payments on account of new retainers of professionals or advisors, (ii) establish or fund any directors or employees trust, or (iii) purchase or fund any additional directors' and officers' insurance, in each case unless otherwise approved by the Administrative Agent and the Monitor.

**SECTION 5.03 Reporting Requirements.** So long as any Loan shall remain unpaid or any Lender shall have any Commitment hereunder, each Credit Party will furnish to the Administrative Agent:

(a) Default Notice. As soon as possible and in any event within two (2) Business Days after any Responsible Officer of the Borrower has knowledge of the occurrence of any Default or within three (3) Business Days after any Responsible Officer of any Credit Party has knowledge of the occurrence of any event, development or occurrence reasonably likely to have a Material Adverse Effect continuing on the date of such statement, a statement of a Responsible Officer (or person performing similar functions) of such Credit Party setting forth details of such Default or other event and the action that the Credit Parties have taken and propose to take with respect thereto.

(b) Annual Financials. As soon as available and in any event within [120] days after the end of each Fiscal Year, on a consolidated basis, commencing with the Fiscal Year ending December 31, 2009, a copy of the annual audit report for such Fiscal Year, including therein a Consolidated balance sheet of the Credit Parties, as of the end of such Fiscal Year and Consolidated statements of income and cash flows of the Credit Parties, for such Fiscal Year, in each case accompanied by (A) in the case of the financial statements of the Borrower and its GAAP Subsidiaries, an opinion of independent public accountants of recognized national standing reasonably acceptable to the Required Lenders and (B) a certificate of a Responsible Officer of the Borrower stating that no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto.

(c) Monthly Financials. Upon the written request of the Lenders, deliver to the Lenders, on a consolidated basis: (i) monthly financial statements of the Borrower and its GAAP Subsidiaries due on or before the 30<sup>th</sup> day after month-end, in the case of the first two months of each Fiscal Quarter, and the 60<sup>th</sup> day after month-end, in the case of the third month of each Fiscal Quarter, and certified by a Responsible Officer of the Borrower, (ii) a report of monthly mill-level earnings before interest, taxes, depreciation and amortization and (iii) such other financial information required to be delivered to the Courts for such month, which information shall be in form and detail reasonably satisfactory to the Required Lenders, and, without duplication, a comparison of such financial information with the projections for such month in the Budget all in reasonable detail and duly certified by a Responsible Officer of the Borrower. In addition, no later than the last Business Day of each calendar month, and on any other date on which the Borrower may deliver the same to the Courts, a supplement to the Budget setting forth on a weekly basis for the next thirteen weeks (commencing with the immediately succeeding calendar week) an updated forecast of the information contained in the Budget for such period and a written set of supporting assumptions, all in form and substance reasonably satisfactory to the Required Lenders.

(d) Quarterly Financials. On a consolidated basis, in each case commencing with the Fiscal Quarter ending June 30, 2010, as soon as available and in any event within 60 days after the end of each of the first three quarters of each Fiscal Year, balance sheets of the Borrower and its GAAP Subsidiaries as of the end of such quarter, and statements of income and cash flows of the Borrower and its GAAP Subsidiaries for the period commencing at the end of the previous quarter and ending with the end of such quarter, and statements of income and cash flows of the Borrower and its GAAP Subsidiaries for the period commencing at the end of the previous Fiscal Year and ending with the end of such quarter, setting forth, in each case in comparative form the corresponding figures for the corresponding period of the immediately preceding Fiscal Year, all in reasonable detail and duly certified (subject to normal year-end audit adjustments and subject to any adjustments that might be required as a result of goodwill impairment testing) by a Responsible Officer of the Borrower as having been prepared in accordance with GAAP, together with a certificate of said officer stating that no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto.

(e) Bankruptcy Pleadings and Other Information. Promptly after the same is available, advance copies of all pleadings (to the extent practicable), motions, applications, judicial information, financial information and other documents to be filed by or on behalf of any of the Credit Parties with the Courts in the Proceedings, or distributed by or on behalf of any of the Credit Parties to any committee appointed in the Proceedings, providing copies of same to the Lenders and counsel for the Administrative Agent.

(f) Budget. No later than 5:00 p.m. (Toronto time) on each Friday of each week following the Effective Date, upon the request of the Lenders, (i) a Budget, and (ii) as promptly as possible following delivery of a Budget and in no event later than five (5) Business Days following such delivery, a reporting package, consistent with the reporting package provided to the Lenders as of the Effective Date, which includes, among other things, a variance discussion and such other information as may be reasonably requested by the Administrative Agent and certified by a Responsible Officer. Any proposed variance, or derogation from the Budget shall require prior written approval of the Required Lenders in their sole discretion. The Required Lenders shall have the right to approve (in their sole discretion) the Budget at the beginning of the first week of each calendar month and in advance of each submission of the Budget to any Court.

(g) Budget Variance Report. No later than the last Business Day of each calendar week (commencing with the calendar week starting immediately after the Effective Date), a Budget Variance Report as of the end of the immediately preceding calendar week upon request of the Lenders.

(h) ERISA Events and ERISA Reports. (i) Promptly and in any event within three (3) Business Days after any Credit Party or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred with respect to an ERISA Plan, a statement of a Responsible Officer of the Borrower describing such ERISA Event and the action, if any, that such Credit Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (ii) on the date any records, documents or other information must be furnished to the PBGC with respect to any ERISA Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information.

(i) Canadian Pension Plan Events. Promptly and in any event within three (3) Business Days after any Credit Party knows that a Canadian Pension Plan Event has occurred, evidence of such Canadian Pension Plan Event.

(j) Plan Terminations. Promptly and in any event within three (3) Business Days after receipt thereof by any Credit Party or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any ERISA Plan or to have a trustee appointed to administer any ERISA Plan.

(k) Actuarial Reports. Promptly upon receipt thereof by any Credit Party or any ERISA Affiliate, a copy of the annual actuarial valuation report for each ERISA Plan, the funding target attainment percentage (as defined in Section 303(d)(2) of ERISA) of which is less than 90%.

(l) Multiemployer Plan Notices. Promptly and in any event within three (3) Business Days after receipt thereof by any Credit Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (i) the imposition on such Person of Withdrawal Liability by any such Multiemployer Plan, (ii) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (iii) the amount of liability incurred, or that may be incurred, by such Credit Party or any ERISA Affiliate in connection with any event described in clause (i) or (ii) above.

(m) Litigation. Promptly after the commencement thereof, notice of each unstayed action, suit, investigation, litigation and proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting any Credit Party or any of its Subsidiaries that (i) is reasonably likely to be determined adversely and if so determined adversely could be reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement any other Loan Document, the DIP Charge or the consummation of the transactions contemplated hereby.

(n) Environmental Conditions. Promptly after the assertion or occurrence thereof, notice of any Environmental Action against or of any non-compliance by any Credit Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to (i) result in a liability in excess of \$100,000 or (ii) cause any real property to be subject to any material restrictions on ownership, occupancy, use or transferability.

(o) Other Information. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of any Credit Party or any of its Subsidiaries as any Lender (through the Administrative Agent), the Administrative Agent or any of their advisors may from time to time reasonably request.

## ARTICLE VI

### GUARANTEE

#### SECTION 6.01 Guarantee; Limitation of Liability.

(a) : Each Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Credit Party, including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations (such Obligations being the "*Guaranteed Obligations*"), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise, and agrees to pay any and all expenses (including, without limitation, fees and expenses of counsel) incurred by any Agent, the Initial Lenders or any other Lender in enforcing any rights under this Guarantee or any other Loan Document. Without limiting the generality of the foregoing, each applicable Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Credit Party to any Lender as set forth above under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Credit Party.

(b) Each Guarantor, and by its acceptance of this Guarantee, each Agent and each other Lender, hereby confirms that it is the intention of all such Persons that this Guarantee and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer, preference or conveyance or any other transaction capable of being challenged or voided for purposes of any Debtor Relief Law, the *Fraudulent Conveyances Act* (Ontario), the *Assignment and Preferences Act* (Ontario) or any similar foreign, federal or state law to the extent applicable to this Guarantee and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, any Agent, the other Lenders and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor under this Guarantee at any time shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this Guarantee not constituting a fraudulent transfer, preference or conveyance or any other transaction capable of being challenged or voided.

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(c) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Lender under this Guarantee or any other guarantee, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Lenders under or in respect of the Loan Documents.

#### SECTION 6.02 Guarantee Absolute.

(a) Each Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guarantee are independent of the Guaranteed Obligations or any other Obligations of any other Credit Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guarantee, irrespective of whether any action is brought against the Borrower or any other Credit Party or whether the Borrower or any other Credit Party is joined in any such action or actions. The liability of each Guarantor under this Guarantee shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(i) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Credit Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Credit Party or any of its Subsidiaries or otherwise;

(iii) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guarantee, for all or any of the Guaranteed Obligations;

(iv) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Credit Party under the Loan Documents or any other assets of any Credit Party or any of its Subsidiaries;

(v) any change, restructuring or termination of the corporate structure or existence of any Credit Party or any of its Subsidiaries;

(vi) any failure of any Lender to disclose to any Credit Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Credit Party now or hereafter known to such Lender (each Guarantor waiving any duty on the part of the Lenders to disclose such information);

(vii) the failure of any other Person to execute or deliver this Agreement, any Guarantee Supplement or any other guarantee or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the Guaranteed Obligations; or

(viii) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by any Lender that might otherwise constitute a defense available to, or a discharge of, any Credit Party or any other guarantor or surety.

(b) This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by any Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Credit Party or otherwise, all as though such payment had not been made.

#### SECTION 6.03 Waivers and Acknowledgments.

(a) Each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and this Guarantee and any requirement that any Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Credit Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Credit Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.

(d) Each Guarantor acknowledges that the Collateral Agent may, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guarantee, foreclose under any mortgage by nonjudicial sale, and each Guarantor hereby waives any defense to the recovery by the Collateral Agent and the other Secured Parties against such Guarantor of any deficiency after such nonjudicial sale and any defense or benefits that may be afforded by Applicable Law.

(e) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Credit Party or any of its Subsidiaries now or hereafter known by such Lender.

(f) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 6.02 and this Section 6.03 are knowingly made in contemplation of such benefits.

**SECTION 6.04 Subrogation.** Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower, any other Credit Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guarantee or any other Loan Document, including, without limitation, any right of subrogation, reimbursement,

exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Lender against the Borrower, any other Credit Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower, any other Credit Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guarantee shall have been paid in full in cash and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guarantee, such amount shall be received and held in trust for the benefit of the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Collateral Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guarantee, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guarantee thereafter arising. If (i) any Guarantor shall make payment to any Lender of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Guarantee shall have been paid in full in cash and (iii) the Maturity Date shall have occurred, the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guarantee.

**SECTION 6.05 Guarantee Supplements.** Upon the execution and delivery by any Person of a guarantee supplement in substantially the form of Exhibit D hereto (each, a "*Guarantee Supplement*"), (a) such Person shall be referred to as an "*Additional Guarantor*" and shall become and be a Guarantor hereunder, and each reference in this Guarantee to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Loan Document to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guarantee," "hereunder," "hereof" or words of like import referring to this Guarantee, and each reference in any other Loan Document to the "Guarantee," "thereunder," "thereof" or words of like import referring to this Guarantee, shall mean and be a reference to this Guarantee as supplemented by such Guarantee Supplement.

**SECTION 6.06 Subordination.** Each Guarantor hereby subordinates any and all debts, liabilities and other Obligations owed to such Guarantor by each other Credit Party (the "*Subordinated Obligations*") to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 6.06:

(i) **Prohibited Payments, Etc.** Except during the continuance of a Default, each Guarantor may receive regularly scheduled payments from any other Credit Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Default, however, unless the Required Lenders otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(ii) **Prior Payment of Guaranteed Obligations.** In any proceeding under any Debtor Relief Law relating to any other Credit Party including, without limitation, the Proceedings, each Guarantor agrees that the Lenders shall be entitled to receive payment in full in cash of all Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Debtor Relief Law, whether or not constituting an

allowed claim in such proceeding ("Post-Petition Interest") before such Guarantor receives payment of any Subordinated Obligations.

(iii) Turn-Over. After the occurrence and during the continuance of any Default, each Guarantor shall, if the Administrative Agent so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Lenders and deliver such payments to the Administrative Agent on account of the Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guarantee.

(iv) Agent Authorization. After the occurrence and during the continuance of any Default, the Administrative Agent is authorized and empowered (but without any obligation to so do), in its discretion, (A) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the Guaranteed Obligations (including any and all Post-Petition Interest), and (B) to require each Guarantor (x) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (y) to pay any amounts received on such obligations to the Collateral Agent for application to the Guaranteed Obligations (including any and all Post-Petition Interest).

**SECTION 6.07 Continuing Guarantee; Assignments.** This Guarantee is a continuing guarantee and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guarantee and (ii) the Maturity Date, (b) be binding upon each Guarantor, its successors and assigns, and (c) inure to the benefit of and be enforceable by the Lenders and their successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as and to the extent provided in this Agreement. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

## ARTICLE VII

### EVENTS OF DEFAULT

**SECTION 7.01 Events of Default.** If any of the following events ("Events of Default") shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Loan when the same shall become due and payable or any Credit Party shall fail to make any payment of interest on any Loan or any other payment of any of the Obligations under any Loan Document within three (3) Business Days after the same becomes due and payable; or

(b) any representation or warranty made by any Credit Party (or any of its officers) under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

(c) any Credit Party shall fail to perform or observe any term, covenant or agreement contained in this Agreement; or

(d) any Credit Party shall fail to perform any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days; or

(e) one or more nonmonetary judgments or orders shall be rendered against any Credit Party or any of its Subsidiaries that is reasonably likely to have a Material Adverse Effect, and the enforcement of such judgment is not stayed by the Stay of Proceedings; or

(f) any provision of any Loan Document after delivery thereof shall for any reason cease to be valid and binding on or enforceable against any Credit Party intended to be a party to it, or any such Credit Party shall so state in writing; or

(g) any Collateral Document after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien on and security interest in the Collateral purported to be covered thereby; or

(h) any ERISA Event shall have occurred with respect to an ERISA Plan if such ERISA Event, along with any other ERISA Event that has occurred and then exists, is reasonably likely to result in any additional liability of a Credit Party or an ERISA Affiliate with respect to an ERISA Plan; or

(i) any Credit Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Credit Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds \$100,000 or requires payments exceeding \$100,000 per annum; or

(j) any Credit Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, and as a result of such reorganization or termination the aggregate annual contributions of the Credit Parties and the ERISA Affiliates to all Multiemployer Plans that are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization or termination occurs by an amount exceeding \$100,000; or

(k) other than where such event has been approved by the CCAA Court in connection with the CCAA Proceedings at the Effective Date, a contribution or premium required to be paid to or in respect of any Canadian Pension Plan is not paid in a timely fashion in accordance with the terms thereof and all Applicable Law, or material taxes, penalties or fees are owing or exigible under any Canadian Pension Plan beyond the date permitted for payment of same; a proceeding, action, suit or claim (other than routine claims for benefits) is commenced or instituted involving any Canadian Pension Plan or its assets; an event with respect to any Canadian Pension Plan which would entitle any Person (without the consent of the applicable Credit Party) to wind-up or terminate any Canadian Pension Plan, in whole or in part, or which could reasonably be expected to adversely affect the tax status thereof, shall occur; a going concern unfunded actuarial liability, past service unfunded liability or solvency deficiency shall exist with respect to any single Canadian Pension Plan which exceeds \$100,000; or an improper withdrawal or transfer of assets from any Canadian Pension Plan shall occur; or

(l) any of the Proceedings shall be dismissed or, other than the US Proceedings, any proceedings or case shall be commenced (whether voluntary or involuntary) under any chapter of the Bankruptcy Code, or any insolvency proceedings under state or federal laws, by or in respect of the Credit Parties, except with the prior written consent of the Required Lenders in their sole discretion or a

bankruptcy order shall be made under the BIA or the Borrower or any Guarantor shall file a motion or other pleading seeking the dismissal of any of the Proceedings under the Bankruptcy Code, the CCAA or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or the BIA, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) and Section 1106(b) of the Bankruptcy Code) or a receiver, receiver and manager or liquidator shall be appointed in any of the Proceedings or otherwise and the order appointing such trustee, responsible officer or a receiver, receiver and manager or liquidator or examiner shall not be reversed or vacated within 30 days after the entry thereof; or, other than as set forth in the DIP Financing Orders, an application shall be filed by the Borrower or any Guarantor for the approval of any superpriority claim (other than the Charges set out in the DIP Financing Orders) in any of the Proceedings which is pari passu with or senior to the claims of the Administrative Agent, the Collateral Agent, and/or the Lenders against the Borrower or any Guarantor hereunder, or, other than as set forth in the DIP Financing Orders, there shall arise or be granted any such pari passu or senior superpriority claim or the Courts shall enter an order terminating the use of cash collateral; or

(m) the U.S. Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code or the stay in the Initial Order, as applicable, to the holder or holders of any security interest to permit foreclosure or enforcement of any kind (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Credit Parties; or

(n) an order of the U.S. Court or the Canadian Court shall be entered reversing, amending, supplementing, staying for a period in excess of ten (10) days, vacating or otherwise modifying any of the Orders without the prior written consent of the Administrative Agent; or

(o) the Borrower or the Guarantors shall make any payment of Prepetition Debt other than pursuant to the DIP Financing Orders, in accordance with Section 5.02(m), or as otherwise agreed to by the Administrative Agent and acceptable to the Lenders;

(p) the dissolution of the Borrower shall occur; or

(q) CIT under the CIT DIP Facility shall give notice of its intention to exercise remedies against any Credit Party pursuant to the CIT DIP Facility; or

(r) any Order of any of the Courts is made, varied, or vacated or otherwise entered the effect of which would be materially prejudicial to the interests of the Lenders as determined by the Lenders in their sole and absolute discretion; or

(s) any payment is made in breach of Section 5.02(m); or

(t) any default occurs in the performance or observance of any term, covenant or agreement under the CIT DIP Facility, the default remains unremedied after any remedial period with respect thereto and the rights and remedies of CIT thereunder are not stayed by the Stay of Proceedings; or

(u) any Order shall have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent, or the Credit Parties shall have failed to comply in any material respect with any provision of any Order, or the Stay of Proceedings shall have expired; or

(v) except for the US Proceedings, the commencement (whether voluntary or involuntary) of any proceedings or any case under any chapter of the Bankruptcy Code, or any insolvency

proceedings under any state or federal laws, by or in respect of any of the Credit Parties without the prior written consent of the Administrative Agent and the Lenders, in each case in their sole discretion;

then, and in any such event, subject to the limitations set forth in the Orders, without further order of or application to the Courts, the Administrative Agent shall at the request, or may with the consent, of the Required Lenders, (i) declare the obligation of each Lender to make Loans to be terminated, whereupon the same shall forthwith terminate, (ii) restrict or refuse to provide Letters of Credit, (iii) declare any or all Obligations to be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and (iv) pursue its other rights and remedies under the Loan Documents and Applicable Law and equity including directing the Collateral Agent to enforce the DIP Charge.

## ARTICLE VIII

### THE AGENTS

#### SECTION 8.01 Authorization and Action.

(a) Each Lender (on behalf of itself and its Affiliates in their capacities as a Lender) hereby appoints BAM to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each Lender (on behalf of itself and its Affiliates in their capacities as a Lender) hereby appoints BAM to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including acting as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Credit Parties to secure any of the Obligations.

(c) The provisions of this Article are solely for the benefit of the Agents (including any successor Agent appointed pursuant to Section 8.06) and the Lender, and neither the Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions.

#### SECTION 8.02 Agents Individually.

(a) Any Person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Person serving as an Agent hereunder in its individual capacity. Each such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that each financial institution acting as an Agent and any successor Agent may and their respective Affiliates (collectively, the "*Agent Parties*") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively

referred to in this Section 8.02 as the "*Activities*") and may engage in the Activities with or on behalf of one or more of the Credit Parties or their respective Affiliates. Furthermore, the Agent Parties in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for their own account or on behalf of others (including the Credit Parties and their Affiliates and including holding, for its own account or on behalf of others, equity and similar positions in the Borrower, other Credit Parties or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Credit Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent Parties may receive or otherwise obtain information concerning the Credit Parties or their Affiliates (including information concerning the ability of the Credit Parties to perform their respective Obligations hereunder and under the other Loan Documents), which information may not be available to any of the Lenders that are not Affiliates of the Agent Parties. Except for documents expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders, neither any Agent nor any other member of the Agent Parties shall have any duty or responsibility to provide, and shall not be liable for the failure to provide, any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come into the possession of any Agent or any Affiliate thereof or any employee or agent of any of the foregoing.

(c) Each Lender further understands that there may be situations in which parts of the Agent Parties' customers (including the Credit Parties or their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that the Agent Parties are not required to restrict their activities as a result of the Agent Parties acting as Agent (or in any other capacity) hereunder and under the other Loan Documents, and that the Agent Parties may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent Parties of Confidential Information nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by any Agent or any member of the Agent Parties to any Lender that would prevent or restrict the Agent Parties from acting on behalf of customers (including the Credit Parties or their Affiliates) or for their own account. Each Lender agrees that none of any Agent, the Agent Parties nor any member or business of the Agent Parties is under a duty to disclose to any Lender or use on behalf of the Lenders any information whatsoever about or derived from the Activities or to account for any revenue or profits obtained in connection with the Activities.

### SECTION 8.03 Duties of Agents; Exculpatory Provisions.

(a) The Agents' duties hereunder and under the other Loan Documents are solely mechanical and administrative in nature and no Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

(i) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; and

(ii) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise upon the written direction of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that no Agent shall be required to

take any action that, in its opinion or the opinion of its counsel, may expose such Agent or any of its Affiliates to liability or that is contrary to any Loan Document or Applicable Law.

(b) No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary) or (ii) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until notice describing such Default and such event or events is given to such Agent by the Borrower or any Lender.

(c) No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Collateral Documents or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to such Agent. Neither any Agent nor any of its Related Parties shall be responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by any Agent, a Credit Party or any other Person given in, pursuant to or in connection with any Loan Document.

(d) Nothing in this Agreement or any other Loan Document shall require any Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to each Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any Agent.

#### SECTION 8.04 The Collateral Agent's Duties.

(a) The powers conferred on the Collateral Agent hereunder are solely to protect the Secured Parties' interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

(b) Anything contained herein to the contrary notwithstanding, the Collateral Agent may from time to time, when the Collateral Agent deems it to be necessary, appoint one or more subagents (each a "*Subagent*") for the Collateral Agent hereunder with respect to all or any part of the Collateral. In the event that the Collateral Agent so appoints any Subagent with respect to any Collateral, (i) the assignment and pledge of such Collateral and the security interest granted in such Collateral by each Credit Party hereunder shall be deemed for purposes of this Agreement to have been made to such Subagent, in addition to the Collateral Agent, for the ratable benefit of the Secured Parties, as security for the Secured Obligations of such Credit Party, (ii) such Subagent shall automatically be vested, in addition to the Collateral Agent, with all rights, powers, privileges, interests and remedies of the Collateral Agent

hereunder with respect to such Collateral, and (iii) the term "Collateral Agent," when used herein in relation to any rights, powers, privileges, interests and remedies of the Collateral Agent with respect to such Collateral, shall include such Subagent; provided, however, that no such Subagent shall be authorized to take any action with respect to any such Collateral unless and except to the extent expressly authorized in writing by the Collateral Agent.

**SECTION 8.05 Reliance by Agents.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Loans, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loans. Each Agent may consult with legal counsel (who may be counsel for the Borrower or any other Credit Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**SECTION 8.06 Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Each such sub-agent and the Related Parties of each Agent and each such sub-agent shall be entitled to the benefits of all provisions of this Article VIII and Article IX (as though such sub-agents were the "Administrative Agent" or the "Collateral Agent," as the case may be, under the Loan Documents) as if set forth in full herein with respect thereto.

**SECTION 8.07 Resignation and Replacement of Agents.** Any Agent may at any time give notice of its resignation to the Lenders and the Borrower, and may be removed at any time with or without cause by the Required Lenders. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor or upon any such removal by the Required Lenders. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (such 30-day period, the "*Lender Appointment Period*"), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. In addition and without any obligation on the part of the retiring Agent to appoint, on behalf of the Lenders, a successor Agent, the retiring Agent may at any time upon or after the end of the Lender Appointment Period notify the Borrower and the Lenders that no qualifying Person has accepted appointment as successor Agent and the effective date of such retiring Agent's resignation or removal. Upon the resignation or removal effective date established in such notice and regardless of whether a successor Agent has been appointed and accepted such appointment, the retiring Agent's resignation or removal shall nonetheless become effective and (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that, in the case of any resignation or removal by or of the Collateral Agent, the retiring Collateral Agent shall continue to hold any Collateral until such time as a successor Collateral Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the retiring Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges

and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 8.06 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

#### **SECTION 8.08 Non-Reliance on Agents and Other Lenders.**

(a) Each Lender confirms to each Agent, each other Lender and each of their respective Related Parties that it (i) possesses such knowledge and experience in financial and business matters that it is capable, without reliance on any Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, environmental, accounting and other financial matters) of entering into this Agreement, making Loans and other extensions of credit hereunder and under the other Loan Documents and in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risk and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents and that it has, independently and without reliance upon any Agent or any other Lender or any of their respective Related Parties and based on such documents and information, as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to be solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, including but not limited to:

(i) the financial condition, status and capitalization of the Borrower and each other Credit Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(iii) the adequacy, accuracy and/or completeness of any other information delivered by any Agent and any other Lender or by any other Person under or in connection with this Agreement or any other Loan Document, the transactions contemplated by this Agreement and the other Loan Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

**SECTION 8.09 Indemnification.** Each Lender severally agrees to indemnify each Agent (to the extent not promptly reimbursed by the Borrower) from and against such Lender's ratable share (determined as provided below) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against such Agent in any way relating to or

arising out of the Loan Documents or any action taken or omitted by such Agent under the Loan Documents (collectively, the "***Indemnified Costs***"); provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse each Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under Section 9.04, to the extent that such Agent is not promptly reimbursed for such costs and expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.09 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person.

**SECTION 8.10 Remedies.** If any Event of Default shall have occurred and be continuing, subject to the provisions of the applicable Orders, the Collateral Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein and in the Collateral Documents or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral), the PPSA or other Applicable Law.

**SECTION 8.11 Release; Termination.**

(a) Upon any sale, lease, transfer or other disposition of any item of Collateral of any Credit Party in accordance with the terms of the Loan Documents and the applicable Orders (other than sales of Inventory in the ordinary course of business), the Collateral Agent will, at such Credit Party's expense, execute and deliver to such Credit Party such documents as such Credit Party shall reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted hereby; provided, however, that (i) at the time of such request and such release no Default shall have occurred and be continuing, (ii) such Credit Party shall have delivered to the Collateral Agent, at least five (5) Business Days prior to the date of the proposed release, a written request for release describing the item of Collateral and the terms of the sale, lease, transfer or other disposition in reasonable detail, including, without limitation, the price thereof and any expenses in connection therewith, together with a form of release for execution by the Collateral Agent and a certificate of such Credit Party to the effect that the transaction is in compliance with the Loan Documents and as to such other matters as the Collateral Agent may request, and (iii) the proceeds of any such sale, lease, transfer or other disposition required to be applied, or any payment to be made in connection therewith, in accordance with Section 2.04 shall, to the extent so required, be paid or made to, or in accordance with the instructions of, the Collateral Agent when and as required under Section 2.04, and (iv) in the case of Collateral sold or disposed of, the release of a Lien created hereby will not be effective until the receipt by the Collateral Agent of any Net Cash Proceeds required to be paid pursuant to Section 2.04 arising from the sale or disposition of such Collateral in accordance with clause (iii) above.

(b) Upon the payment in full in cash of the Secured Obligations (other than contingent indemnification obligations which are not then due and payable), the pledge and security interest granted hereby shall terminate and all rights to the Collateral shall revert to the applicable Credit Party. Upon any such termination, the Administrative Agent will, at the applicable Credit Party's expense, execute and deliver to such Credit Party such documents as such Credit Party shall reasonably request to evidence such termination.

## ARTICLE IX

### MISCELLANEOUS

**SECTION 9.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders (or each of the Lenders, as applicable) and the Borrower or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (i) waive any condition set forth in Section 3.01 without the written consent of each Lender, or waive or amend Section 2.16;
- (ii) extend or increase the Commitment of any Lender without the written consent of such Lender;
- (iii) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document including without limitation, the Maturity Date (except as otherwise set forth in the definition thereof), without the written consent of each Lender directly affected thereby;
- (iv) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (v) change the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or grant any consent hereunder, without the written consent of each Lender;
- (vi) waive any Event of Default;
- (vii) amend, restate, supplement or otherwise modify any provision of this Agreement or the Orders in any manner that would impair the interests of the Lenders in the Collateral (as determined by the Lenders in their sole discretion) without the consent of each Lender; and
- (viii) release all or substantially all of the value of the Guarantees or all or a material portion of the Property subject to the assignment and security interest granted pursuant to the Loan Documents, lower the priority of any Lien arising out of any Collateral Documents, or lower the priority of any payment obligation of the Borrower or any other Credit Party under any of the Loan Documents without the consent of each Lender;

and provided further that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document.

### SECTION 9.02 Notices, Etc.

(a) All notices and other communications provided for hereunder shall be in writing and shall be given by prepaid mail, by telecopier or other means of electronic communication or by hand delivery, if to the Borrower or any Guarantor, at the Borrower's address at 181 Bay Street, Suite 200, Brookfield Place, Toronto, Ontario, M5J 2T3, Fax No.: 416-359-8606, Attention: Chief Financial Officer; with a copy to: ThorntonGroutFinnigan LLP, Suite 3200, Canadian Pacific Tower, 100 Wellington St. West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario, M5K 1K7, Tel. No.: 416-304-1616 Fax No.: 416-304-1313, Attention: Robert Thornton and D.J. Miller; if to any Lender, at its Lending Office, respectively, specified opposite its name on Schedule I; if to any other Lender, at its Lending Office specified in the Assignment and Acceptance pursuant to which it became a Lender; if to BAM, at its address at 181 Bay Street, Suite 300, Brookfield Place, Toronto, Ontario, Canada, M5J 3T3, Fax No.: 416-365-9642 Attention: Sam Pollock, Senior Managing Partner; with a copy to Torys LLP, 79 Wellington Street West, Suite 300, Box 270, TD Centre, Toronto, Ontario, M5K 1N2, Tel: No.: 416-865-0040, Fax No.: 416-865-7380 Attention: Tony DeMarinis/Tom Zverina, or as to a Borrower, any Guarantor, any Lender or any Agent, at such other address as shall be designated by such party in a written notice to the other parties. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third (3rd) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication must not be mailed but must be given by personal delivery or by electronic communication, except that notices and communications to the Administrative Agent pursuant to Article II or Article III shall not be effective until received by the Administrative Agent. Delivery by telecopier of an executed counterpart of any amendment or waiver of any provision of this Agreement or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of a manually executed counterpart thereof.

(b) The Borrower hereby agrees that it will provide to the Lenders all information, documents and other materials that it is obligated to furnish to the Lenders pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (ii) provides notice of any Default or Event of Default under this Agreement or (iii) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement (all such non-excluded communications being referred to herein collectively as "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Lenders heretofore provided to the Borrower. The Borrower hereby agrees that any information provided to the Administrative Agent shall also be provided to the Lenders.

(c) Each Lender agrees to notify the Borrower in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address. Nothing herein shall prejudice the right of any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

**SECTION 9.03 No Waiver; Remedies.** No failure on the part of any Lender or the Administrative Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right

preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

#### SECTION 9.04 Costs, Fees and Expenses.

(a) The Borrower agrees (i) to pay or reimburse the Lenders for all reasonable costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement (which shall be deemed to include any predecessor transaction contemplated to be entered into with the Lenders), and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby (including the monitoring of, and participation in, all aspects of the Proceedings), including all fees, expenses and disbursements of separate counsel for the Administrative Agent and each Initial Lender on a full indemnity basis, a counsel in each applicable jurisdiction and such other advisors as may be engaged by the Administrative Agent or the Lenders, and (ii) to pay or reimburse the Lenders (including, without limitation, the Administrative Agent for all reasonable costs and expenses incurred in connection with (A) the ongoing maintenance and monitoring of the Commitments, the Loans, the Letters of Credit, and the Availability and (B) enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement, the Loan Documents or otherwise (including all such costs and expenses incurred during any "workout" or restructuring in respect of the Obligations and during any legal proceeding, including the Proceedings), including all reasonable fees, expenses and disbursements of separate counsel on a full indemnity basis for the Administrative Agent and each Initial Lender. The foregoing fees, costs and expenses shall include all search, filing, recording, title insurance, collateral review, monitoring, and appraisal charges and fees and taxes related thereto, and other reasonable out-of-pocket expenses incurred by the Administrative Agent and the Lenders and the cost of independent public accountants and other outside experts retained jointly by the Administrative Agent and the Lenders. All amounts due under this Section 9.04(a) shall be payable within five (5) Business Days after demand therefor accompanied by an appropriate invoice. The agreements in this Section shall survive the termination of the Commitments and this Agreement, and repayment of all of the Obligations.

(b) Whether or not the transactions contemplated hereby are consummated, each of the Credit Parties shall indemnify and hold harmless the Initial Lender, the Administrative Agent, the Collateral Agent, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, advisors, attorneys-in-fact and representatives (collectively the "*Indemnitees*") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, fees and disbursements of counsel), joint or several that may be incurred by, or asserted or awarded against any Indemnitee, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any Property currently or formerly owned or operated by the Borrower or any other Credit Party, or any liability related in any way to the Borrower or any other Credit Party in respect of Environmental Laws or any Environmental Action, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "*Indemnified Liabilities*"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such claim, damage, loss, liability or expense is

determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Credit Party, any security holders or creditors of the foregoing an Indemnitee or any other Person, or an Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. No Indemnitee shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Credit Parties or any of their Subsidiaries for or in connection with the transactions contemplated hereby, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct. In no event, however, shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings). All amounts due under this Section 9.04(b) shall be payable within two (2) Business Days after demand therefor. The agreements in this Section shall survive the resignation of the Administrative Agent or the Collateral Agent, the replacement of any Lender, the termination of the Commitments and this Agreement, and the repayment, satisfaction or discharge of all of the Obligations.

(c) If any payment of principal of any LIBOR Loan is made by the Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Loan, or if the Borrower fails to make any payment or prepayment of an Loan for which a notice of prepayment has been given or that is otherwise required to be made, the Borrower shall, upon demand by such Lender (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or such failure to pay or prepay, as the case may be, including, without limitation, any actual loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Loan.

**SECTION 9.05 Right of Set-off.** Subject to the Orders, upon (a) the occurrence and during the continuance of any Event of Default and (b) the making of the request or the granting of the consent specified by Section 7.01 to authorize the Administrative Agent to declare the Loans due and payable pursuant to the provisions of Section 7.01, each Lender and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or such Affiliate to or for the credit or the account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing under this Agreement, irrespective of whether such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Lender and its respective Affiliates may have.

**SECTION 9.06 Binding Effect.** This Agreement shall become effective when it shall have been executed by the Borrower, the Guarantors, the Initial Lenders and the Administrative Agent shall have been notified by each Lender that such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent, the Initial Lenders and each other Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of each Lender.

**SECTION 9.07 Successors and Assigns; Initial Lender Right of First Refusal.**

(a) Each Lender may assign all or a portion of its rights and obligations under this Agreement; provided, however, that (i) each such assignment shall be of a uniform, and not a varying, percentage of all rights and obligations under and in respect of the DIP Facility, (ii) except in the case of an assignment to a Person that, immediately prior to such assignment, was a Lender, an Affiliate of any Lender, an Approved Fund of any Lender, BAM, an Affiliate of BAM or an Approved Fund of BAM the consent of the Administrative Agent and of the Borrower shall be required (such consent not to be unreasonably withheld, conditioned or delayed) unless, in the case of the Borrower, an Event of Default shall have occurred and be continuing, (iii) each such assignment shall be to an Eligible Assignee, (iv) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, (v) such Eligible Assignee shall execute each of the other Loan Documents as requested by the Required Lenders; and (vi) except in the case of an assignment to a person that, immediately prior to such assignment, was a Lender, an Affiliate of any Lender, an Approved Fund of any Lender, BAM, an Affiliate of BAM or an Approved Fund of BAM a processing fee in the amount of \$3,500.00 shall be payable to the Administrative Agent by any assignee in connection with such assignment.

(b) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (ii) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Section 2.14, Section 2.15 and Section 8.05 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, each Lender assignor thereunder and each assignee thereunder confirm to and agree with each other and the other parties thereto and hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any Loan Document or any other instrument or document furnished pursuant thereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Credit Party or the performance or observance by any Credit Party of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial and other statements referred to in Section 5.03 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Loan Documents as are delegated to the Administrative Agent by the terms hereof and thereof, together with such powers and discretion as are reasonably incidental thereto; and

(vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(d) The Administrative Agent, acting for this purpose (but only for this purpose) as the Administrative Agent of the Borrower, shall maintain at its address referred to in Section 9.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment hereunder of, and principal amount of the Loans owing hereunder to, each Lender from time to time (the "*Register*"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or the Administrative Agent or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit A, as applicable, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof and a copy of such Assignment and Acceptance to the Borrower.

(f) Any Lender may, in connection with any assignment or proposed assignment pursuant to this Section 9.07, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided, however, that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Confidential Information received by it from such Lender in accordance with Section 9.12 hereof.

**SECTION 9.08 Assignment and Participation.** A Lender (herein sometimes called a "*Granting Lender*") may, with the prior written consent of the Borrower, which consent may not be unreasonably withheld, conditioned or delayed, grant a participation in the DIP Facility to one or more financial institutions or other entities (the "*Participant*"). If a participation is granted, (A) the Granting Lender shall remain fully liable for all of its obligations and responsibilities under this Agreement to the same extent as if the participation had not been granted, and (B) the Granting Lender shall administer the participation of the Participant. None of the Participant and the Borrower shall have any rights against or obligations to one another, nor shall any of them be required to deal directly with one another in respect of the participation by a Participant. Notwithstanding the foregoing, no Lender may grant a participation or assign all or any part of its rights to or have any of its obligations assumed by any financial institution, Affiliate or entity that is a non-resident of Canada for the purposes of Part XIII of the *Income Tax Act* (Canada), unless any of the following shall have occurred: (A) the failure by the Borrower to make when due, whether by acceleration or otherwise, any payment of principal required to be made by the Borrower under this Agreement or any other Loan Document, (B) the failure by the Borrower to make when due (and after the expiry of any applicable grace period), whether by acceleration or otherwise, any payment of interest, fees, costs or any other payment under this Agreement or any other Loan Document, (C) the exercise of any rights pursuant to Section 7.01, or (D) at the time the participation is granted or the assignment is made, withholding tax would not be exigible under the *Income Tax Act* (Canada) on interest, fees or other compensation paid or credited to the participant or assignee. Notwithstanding anything to the contrary herein contained, where (i) the granting of a participation or the assignment of all or any part of the rights of a Lender hereunder is to a Lender, an Affiliate of any Lender, an Approved Fund of any Lender, BAM, an Affiliate of BAM or an Approved Fund of BAM; or (ii) a Default or an Event of Default has occurred and is continuing, the consent of the Borrower shall not be required.

**SECTION 9.09 Borrower Cooperation.** Provided that the consent of the Borrower, if required, shall have been given, the Borrower will execute such further documents and instruments and do such further things as the Administrative Agent may reasonably request for the purpose of any participation or assignment. The Administrative Agent shall consult with the Borrower in connection with any further, future syndication of the DIP Facility by the Administrative Agent or any of its Affiliates.

**SECTION 9.10 Disclosure.** The Administrative Agent and each Lender may disclose to any prospective Participants, Assignees or Affiliates of any Lender, on a confidential basis, such information concerning the Borrower and the other Credit Parties as it considers appropriate without incurring any liability for any breach of the duty of banker customer confidentiality but subject to receiving an undertaking from such prospective Participant or Assignee to receive and maintain such information in confidence.

**SECTION 9.11 Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or other means of electronic communication shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 9.12 Confidentiality.**

(a) **Confidential Information.** The Administrative Agent and the Lenders shall not disclose any Confidential Information to any Person without the consent of the Borrower, other than (i) to the Administrative Agent or such Lender's Affiliates and their officers, directors, employees, agents and advisors and to actual or prospective Eligible Assignees and participants, and then only on a confidential, need-to-know basis, (ii) as requested or required by any law, rule or regulation or judicial process or (iii) as requested or required by any state, federal or foreign authority or examiner regulating banks or banking.

(b) **Press Releases and Related Matters.** Each of the parties hereto and each party joining hereafter agrees that neither it nor its Affiliates will at any time after (but not including) the Effective Date issue any press releases using the name of any Lender or its Affiliates or referring to this Agreement or any of the other Loan Documents without at least two (2) Business Days' prior notice to such Lender and without the prior written consent of such Lender or unless (and only to the extent that) such party or Affiliate is required to do so under law and then, in any event, such party or Affiliate will consult with the Borrower, the Administrative Agent, Brookfield and such Lender before issuing such press release. Each party consents to the publication by the Administrative Agent and Brookfield or any other Lender of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement. The Administrative Agent and Brookfield reserve the right to provide to industry trade organizations such necessary and customary information needed for inclusion in league table measurements.

**SECTION 9.13 Survival.** All covenants, agreements, representations and warranties made by the Borrower and the other Credit Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any

credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loans or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. Sections Section 2.11(e), Section 9.04(a), and Section 9.04(b) shall survive and remain in full force and effect, regardless of the consummation of the transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

**SECTION 9.14 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

**SECTION 9.15 Severability.** Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**SECTION 9.16 Jurisdiction, Etc.**

(a) The Credit Parties, the Lenders and the other parties hereto hereby irrevocably and unconditionally submit to the exclusive jurisdiction and venue of (a) the CCAA Court; and (b) to the extent applicable, the U.S. Court (except to the extent the Administrative Agent requires submission to any other jurisdiction in connection with the enforcement of any judgment). In the event that the Courts do not have or do not exercise jurisdiction, the Credit Parties, the Lenders and the other parties hereto hereby irrevocably and unconditionally submit to the exclusive jurisdiction and venue in any court of competent jurisdiction in the Province of Ontario.

(b) Except in so far as the Court shall jurisdiction over the matter, each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in any court of competent jurisdiction in the Province of Ontario. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**SECTION 9.17 Time.** All time references herein shall, unless otherwise specified, be references to local time in Toronto, Ontario. Time is of the essence of this Agreement and the other Loan Documents.

**SECTION 9.18 Governing Law.** This Agreement and any Notes shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

**SECTION 9.19 WAIVER OF JURY TRIAL.** EACH OF THE CREDIT PARTIES, THE ADMINISTRATIVE AGENT, THE INITIAL LENDERS AND THE LENDERS IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE

LOANS OR THE ACTIONS OF THE ADMINISTRATIVE AGENT, INITIAL LENDERS OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

**SECTION 9.20 Paramountcy.** In the event of any conflict or inconsistency between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall prevail to the extent of such inconsistency.

**SECTION 9.21 LIMITATION OF LIABILITY.** NO CLAIM MAY BE MADE BY THE BORROWER, ANY GUARANTOR, ANY LENDER OR OTHER PERSON AGAINST THE AGENT, ANY LENDER, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND THE BORROWER, EACH GUARANTOR, EACH LENDER AND THE AGENT HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

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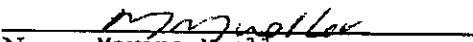
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**FRASER PAPERS INC.**

Per:

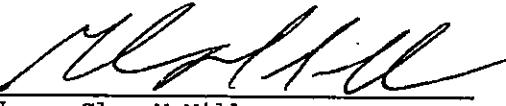
  
Name: Glen McMillan  
Title: Chief Restructuring Officer

c/s

  
Name: Marina Mueller  
Title: Assistant Corporate Secretary

**FPS CANADA INC.**

Per:

  
Name: Glen McMillan  
Title: Secretary

c/s

  
Name: Marina Mueller  
Title: Assistant Secretary

**FRASER PAPERS HOLDINGS INC.**

Per:

  
Name: Glen McMillan  
Title: Secretary

c/s

  
Name: Marina Mueller  
Title: Assistant Secretary

**FRASER TIMBER LIMITED**

Per:

  
Name: Glen McMillan  
Title: Secretary

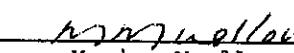
c/s

  
Name: Marina Mueller  
Title: Assistant Secretary**FRASER PAPERS LIMITED**

Per:

  
Name: Glen McMillan  
Title: Secretary

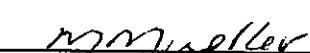
c/s

  
Name: Marina Mueller  
Title: Assistant Secretary**FRASER N.H. LLC**

Per:

  
Name: Glen McMillan  
Title: Secretary

c/s

  
Name: Marina Mueller  
Title: Assistant Secretary

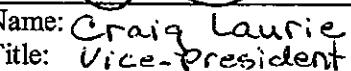
**BROOKFIELD US CORPORATION**, in its  
capacity as Initial Lender and a Lender

Per:



Name: BILL POWELL  
Title: MANAGING PARTNER

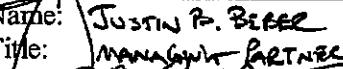
c/s



Name: Craig Laurie  
Title: Vice-President

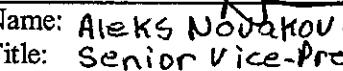
**BROOKFIELD ASSET MANAGEMENT  
INC.**, in its capacity as Collateral Agent and  
Administrative Agent

Per:



Name: JUSTIN P. BERGER  
Title: MANAGING PARTNER

c/s



Name: Aleks Novakovic  
Title: Senior Vice-President, Taxation

SCHEDULE I  
COMMITMENT

<u>LENDER</u>	<u>COMMITMENT</u>	<u>ADDRESS</u>
BROOKFIELD (US) CORPORATION	\$25,000,000	Three World Financial Centre 11th Floor New York, New York 10281-1021 USA

**SCHEDULE 4.01(h)**  
**CANADIAN PENSION PLANS**

On June 8, 2010, the Administrator of the New Brunswick defined benefit registered pension plans (Morneau) notified the Borrower that it would be filing a deemed trust claim under the New Brunswick Pension Benefits Act that relates to pension contributions that Morneau asserts were in default as of the CCAA Filing Date. On June 18, 2010, Morneau advised the Borrower that it estimates the amount it asserts was in default on the CCAA Filing Date to be \$4.5 million in Canadian Dollars.

By order of the Superintendent of Pensions for New Brunswick, the New Brunswick defined benefit registered pension plans were wound up in their entirety on April 28, 2010 with an effective date of April 27, 2010.

**SCHEDULE 5.02(a)(v)****EXISTING LIENS**

■ [NTD: TGF to insert.]

**SCHEDULE 5.02(g)****INVESTMENTS**

Nil

**SCHEDULE 5.02(n)**  
**SALES AND LEASE BACKS**

Nil

EXHIBIT AFORM OF ASSIGNMENT AND ACCEPTANCE

Dated: \_\_\_\_\_, 20\_\_\_\_

Reference is made to the credit agreement dated as of July 9, 2010 (as amended, modified, supplemented and in effect from time to time, the "*Credit Agreement*"), among, *inter alia*, Fraser Papers Inc. (the "*Borrower*"), the Lenders named therein, Brookfield (US) Corporation, as Initial Lender and a Lender, and Brookfield Asset Management Inc, as Collateral agent and Administrative Agent (in such capacity, the "*Administrative Agent*"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Credit Agreement.

This Assignment and Acceptance Agreement (the "*Assignment and Acceptance Agreement*"), between [Insert Name of Assignor] (herein the "*Assignor*", as further defined and set forth on Schedule 1 hereto and made a part hereof) and [Insert Name of Assignee] (herein the "*Assignee*", as further defined and set forth on Schedule 1 hereto and made a part hereof) is dated as of Effective Date (as set forth on Schedule 1 hereto and made a part hereof).

1. The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor (subject to Section 2 hereof), and the Assignee hereby irrevocably purchases and assumes from the Assignor without recourse to the Assignor (subject to Section 2 hereof), as of the Effective Date, an undivided interest (the "*Assigned Interest*") in and to all the Assignor's rights and obligations under the Credit Agreement, and only the financing facility contained in the Credit Agreement as is set forth on Schedule 1 (the "*Assigned Facility*"), in a principal amount for such Assigned Facility as set forth on Schedule 1, and all right, title and interest of the Assignor in and to the Loan Documents relating thereto.
2. The Assignor (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance Agreement, (ii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Agreement or any other instrument, document or agreement executed in conjunction therewith (collectively the "*Ancillary Documents*") or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Agreement, any Collateral thereunder or any of the Ancillary Documents furnished pursuant thereto, other than that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim and (iii) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or any guarantor or the performance or observance by the Borrower or any guarantor of any of its respective obligations under the Credit Agreement or any of the Ancillary Documents furnished pursuant thereto.
3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance Agreement; (ii) confirms that it has received a copy of the Credit Agreement, together with the copies of the most recent financial statements of the Borrower, and such other documents and information as it has deemed appropriate to make its own credit

analysis; (iii) agrees that it will, independently and without reliance upon the Administrative Agent, the Assignor or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iv) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (v) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

4. Following the execution of this Assignment and Acceptance Agreement, such agreement will be delivered to the Administrative Agent for acceptance by it and the Borrower, effective as of the Effective Date.

5. Upon such acceptance, from and after the Effective Date, the Administrative Agent shall make all payments in respect of the assigned interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the Effective Date made by the Administrative Agent or with respect to the making of this assignment directly between themselves.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Acceptance Agreement, have the rights and obligations of a Lender thereunder, and (ii) the Assignor shall, to the extent provided in this Assignment and Acceptance Agreement, relinquish its rights and be released from its obligations under the Credit Agreement.

7. This Assignment and Acceptance Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

8. This Assignment and Acceptance Agreement may be executed in one or more counterparts by facsimile transmission, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance Agreement to be executed by their respective duly authorized officers.

Accepted:<sup>1</sup>

**BROOKFIELD ASSET  
MANAGEMENT INC., As  
Administrative Agent**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

[NAME OF ASSIGNEE], As Assignee

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

---

<sup>1</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement

[NAME OF ASSIGNOR], As Assignor

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Consented to:<sup>2</sup>

**FRASER PAPERS INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

---

<sup>2</sup> To be added only if the consent of the Borrower and/or other parties (for eg. the Guarantors) is required by the terms of the Credit Agreement

**Schedule 1 to Assignment and Acceptance Agreement**

Name of Assignor: ■

Name of Assignee: ■

Effective Date of Assignment: \_\_\_\_\_, 20\_\_\_\_

Assigned Facility	Principal Amount Assigned	Percentage Assigned of DIP Facility (shown as a percentage of aggregate original principal amount of all Lenders)
Loans	\$■	■%
Total:	\$■	■%

**EXHIBIT B****FORM OF NOTE**

Date: ■

**FOR VALUE RECEIVED** the undersigned hereby unconditionally promises to pay on demand to the order of Brookfield (US) Corporation ("Brookfield"), in lawful money of the United States of America, the unpaid Obligations under the DIP Facility as recorded on the grid schedule attached hereto, in accordance with the provisions regarding the payment of such Obligations set forth in the credit agreement dated as of July 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*") between, *inter alia*, the undersigned, the Lenders party thereto, Brookfield, as Initial Lender and a Lender and Brookfield Asset Management Inc., as Collateral Agent and Administrative Agent.

This grid promissory note is issued pursuant to and is subject to the provisions of the Credit Agreement. All terms used in this grid promissory note which are defined in the Credit Agreement have the meanings attributed thereto in the Credit Agreement.

The undersigned acknowledges that the actual recording of amounts advanced and amounts paid on the attached grid schedule shall, in the absence of manifest error, be *prima facie* evidence of the same; provided that the failure of Brookfield to record the same on the grid schedule shall not affect the obligation of the undersigned to pay or repay the Obligations.

Payments of principal and interest hereunder must be made at such location, on such dates, at such times and in such manner as set out in the Credit Agreement.

The undersigned waives presentment for payment, notice of non-payment, protest and notice of protest of this grid promissory note and diligence in collection or bringing suit.

This grid promissory note shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**FRASER PAPERS INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Currency: US Dollars

<u>DATE</u>	<u>ADVANCE REQUESTED BY</u>	<u>ADVANCES</u>	<u>INTEREST</u>	<u>PAYMENTS</u>	<u>UNPAID BALANCE</u>	<u>NOTATION MADE BY</u>
■	■	■	■	■	■	■
■	■	■	■	■	■	■

EXHIBIT CFORM OF NOTICE OF BORROWING

(Letter to be typed on Borrower's Letterhead)

[DATE]

Brookfield Asset Management Inc.  
 181 Bay Street, Suite 300  
 Brookfield Place  
 Toronto, Ontario  
 M5J 3T3

Attention: FAX: **BORROWING NOTICE**

Ladies/Gentlemen:

We refer to the credit agreement dated as of July 9, 2010 (as amended, restated, supplemented, replaced or otherwise modified from time to time the "*Credit Agreement*"; capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Credit Agreement), between, *inter alia*, Fraser Papers Inc., as borrower (the "*Borrower*"), Brookfield (US) Corporation, as Initial Lender and a Lender and Brookfield Asset Management Inc., as Collateral Agent and Administrative Agent (in such capacity, the "*Administrative Agent*").

We hereby instruct and authorize the Administrative Agent to make advances to our disbursement account(s), subject to and in accordance with the terms and provisions of the Credit Agreement to the account numbers specified below and to charge the Borrower's loan account as Loans with each such advance(s).

The Borrower hereby requests an advance (the "*Advance*") be made under the DIP Facility as follows:

A. the Borrowing Amount :

Base Rate Loan (US\$) \_\_\_\_\_

LIBOR Loan \_\_\_\_\_

[The initial Interest Period for each LIBOR Advance made as part of the Borrowing is  
 \_\_\_\_ month[s].]

Letter of Credit/Credit Support\*: \_\_\_\_\_

Additional Information: As per the attached Letter of Credit application

\* Attach a copy of the Letter of Credit application duly completed by the Borrower in accordance with the provisions of the Credit Agreement.

B. the Drawdown Date: \_\_\_\_\_ [DATE] \_\_\_\_\_

Notice requirements as stated in the Credit Agreement are:

1:00 p.m. (Toronto time) on the requested Borrowing Date for Base Rate Loans and the LIBOR Loans

Proceeds of the Advance are to be directed as follows:

Bank Name: \_\_\_\_\_

Account Name: \_\_\_\_\_

Branch #: \_\_\_\_\_

Account Number: USD# \_\_\_\_\_

The Borrower hereby acknowledges that the Administrative Agent will make payments strictly on the basis of the account number furnished herein even if such account number identifies a party other than the name of the account listed above. In the event the above account number is incorrect, we hereby agree to be fully liable for any and all losses, costs, and expenses arising therefrom.

The Borrower hereby confirms as follows:

- (a) Each of the representations and warranties made by the Borrower and the other Credit Parties in or pursuant to the Credit Agreement and the other Loan Documents are true and correct on and as of the date hereof as if made on and as of the date hereof, except where such representation and warranty refers to a different date.
- (b) No Default or Event of Default has occurred and is continuing on the date hereof or will occur after the making of the Advance(s) requested hereunder.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Yours truly,

FRASER PAPERS INC.

By: \_\_\_\_\_

Name:

Title:

EXHIBIT DFORM OF GUARANTEE SUPPLEMENT

[DATE]

Brookfield Asset Management Inc.  
181 Bay Street, Suite 300  
Brookfield Place  
Toronto, Ontario  
M5J 3T3

Attention: ■

Re: Senior Secured Superpriority Debtor-In-Possession Credit Agreement dated as of July 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*") between, *inter alia*, Fraser Papers Inc. (the "*Borrower*"), Brookfield (US) Corporation, as Initial Lender and a Lender and Brookfield Asset Management Inc., as Collateral Agent and Administrative Agent (in such capacity, the "*Administrative Agent*")

Ladies and Gentlemen:

Reference is made to the Credit Agreement. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

Section 1. Guarantee; Limitation of Liability (a) The undersigned hereby irrevocably guarantees the punctual payment when due, whether at scheduled maturity or at a date fixed for prepayment or by acceleration, demand or otherwise, of all of the Obligations of the Borrower now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnification payments, contract causes of action, costs, expenses or otherwise (such Obligations being the "*Guaranteed Obligations*"), and agrees to pay any and all expenses (including, without limitation, reasonable and actual fees and expenses of counsel) incurred by the Administrative Agent or any of the other Secured Parties solely in enforcing any rights under this Guarantee Supplement or any other Loan Document. Without limiting the generality of the foregoing, the undersigned's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrower to the Administrative Agent or any of the other Secured Parties under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Credit Party.

(b) The undersigned, and by its acceptance of this Guarantee Supplement, the Administrative Agent and each other Secured Party, hereby confirms that it is the intention of all such Persons that this Guarantee Supplement and the Obligations of the undersigned hereunder and thereunder not constitute a fraudulent transfer or conveyance for purposes of Debtor Relief Laws, the *Fraudulent Conveyances Act* (Ontario), the *Assignment and Preferences Act* (Ontario) or any similar foreign, federal, state or provincial law to the extent applicable to this Guarantee Supplement and the Obligations of the undersigned hereunder and thereunder. To effectuate the foregoing intention, the Administrative Agent, the other Secured Parties and the undersigned hereby irrevocably agree, by their acceptance of this Guarantee Supplement, that the Obligations of the undersigned under this Guarantee Supplement at any time shall be limited to the maximum amount as will result in the Obligations of the undersigned under this Guarantee Supplement not constituting a fraudulent transfer or conveyance.

(c) The undersigned hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Lender under this Guarantee Supplement or any other guarantee, the undersigned will contribute, to the maximum extent permitted by applicable law, such amounts to each other Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agents and the Lenders under or in respect of the Loan Documents.

**Section 2. Obligations Under the Guarantee Supplement** The undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guarantee Supplement and the Credit Agreement to the same extent as each of the other Guarantors under the Credit Agreement. The undersigned further agrees, as of the date first above written, that each reference in the Guarantee Supplement to an "**Additional Guarantor**" or a "**Guarantor**" shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a "**Subsidiary Guarantor**" or a "**Credit Party**" shall also mean and be a reference to the undersigned.

**Section 3. Representations and Warranties** The undersigned hereby makes each representation and warranty set forth in Section 4 of the Credit Agreement, as of the date hereof, to the same extent as each other Guarantor.

**Section 4. Delivery** Delivery of an executed counterpart of a signature page to this Guarantee Supplement by telecopier or other means of electronic communication shall be effective as delivery of an original executed counterpart of this Guarantee Supplement.

**Section 5. Governing Law; Jurisdiction; Waiver of Jury Trial, Etc** This Guarantee Supplement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) The undersigned hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any court in the Province of Ontario or federal court of Canada sitting in the City of Toronto in the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and

unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such Ontario court or, to the extent permitted by law, in such federal court. The undersigned hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction.

(c) The undersigned hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in any Ontario or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) The undersigned hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to any of the Loan Documents, the Advances, the Loans or the actions of the Administrative Agent or any Lender in the negotiation, administration, performance or enforcement thereof.

[Remainder of page intentionally left blank]

Very truly yours,

**[NAME OF ADDITIONAL  
GUARANTOR, a debtor and debtor-in-  
possession]**

By: \_\_\_\_\_

Name:

Title:

EXHIBIT EFORM OF REPAYMENT NOTICE

(Letter to be typed on Borrower's Letterhead)

[DATE]

Brookfield Asset Management Inc.  
181 Bay Street, Suite 300  
Brookfield Place  
Toronto, Ontario  
M5J 3T3

Attention: FAX: **REPAYMENT NOTICE**

Ladies/Gentlemen:

We refer to the credit agreement dated as of July 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*"; capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement) among, *inter alia*, Fraser Papers Inc. (the "*Borrower*"), Brookfield (US) Corporation, as Initial Lender and a Lender and Brookfield Asset Management Inc., as Collateral Agent and Administrative Agent (in such capacity, the "*Administrative Agent*").

We hereby notify the Administrative Agent of the Borrower's repayment of the Loans, subject to and in accordance with the terms and provisions of the Credit Agreement in the amount of:

**A. The repayment amount:****Base Rate Loan:** US\$ \_\_\_\_\_**LIBOR Loan:** US\$ \_\_\_\_\_**B. The date of repayment\*:** \_\_\_\_\_

\*If notice is received prior to 12:00 noon (Toronto time) on the repayment date, otherwise the date of repayment will be the following business day.

Proceeds of the repayment are to be deposited to the account of Brookfield (US) Corporation as follows:

Bank Name: ■  
Account Name: ■  
Transit Number: ■  
Account Number: ■

The herein mentioned repayment does not constitute, nor shall it be construed as, a termination or partial termination of the Credit Agreement or the Loans.

Yours truly,

FRASER PAPERS INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# **EXHIBIT “B”**

**Fraser Papers Inc. et al.**  
**Combined 19 Week Cash Flow Forecast**  
**Notes and Assumptions.**

- 1 Operational status – The 19 week cash flow forecast ("CFF") is premised on the assumption that the Gorham mill was shut down on October 13, 2010 and will not operate during the CFF period. The Masardis lumber mill will operate at full capacity, with the exception of one week of saw mill downtime in October 2010, until it is forecasted to be sold during the week of December 20, 2010. The Ashland mill will remain closed throughout the CCF period. The Gorham mill is forecasted to be sold during the week of November 29, 2010. The net proceeds from these asset sales are not included in the CFF (to avoid compromising these sales activities), but will be used to repay the BAM DIP when received.
- 2 Collection of Third Party Trade Accounts Receivable consists of cash receipts from the Gorham mill and the Masardis lumber mill, based on current accounts receivable balances, management's updated revenue forecasts and the expected dates of sale. The timing of cash receipts is based upon historical and seasonal collection patterns.
- 3 Collection of Other Accounts Receivable includes collections of approximately \$388K in credits from the Canadian Federal Government Pulp and Paper Green Transformation Program in December 2010. With the sale of the Canadian operations, there are minimal monthly GST and HST refunds.
- 4 Raw Material Costs represent materials required for production, primarily logs. The raw material disbursements are based on historical costs, analyst and economic forecasts, expected required purchases throughout the 19 week period, and arrangements that have been negotiated with suppliers. Working capital levels are expected to decrease throughout the forecast period due to the closure of the Gorham mill on October 13, 2010.
- 5 Production Overhead Costs primarily represent supplies, consumables, repairs and maintenance. These costs are based on forecast production levels, historical costs, expected costs based on the forecast operations of the Masardis mill, maintenance costs at the Gorham mill prior to the sale and arrangements that have been negotiated with suppliers.
- 6 Selling, General and Admin costs primarily represent shipping and freight, general and admin fees and insurance payments. Costs are based on historical expenses, adjusted for known changes in these disbursement levels, the amount of credit being provided by suppliers and arrangements that have been negotiated with these suppliers.
- 7 Employee Costs represent salaries, wages, vacation pay, pension contributions and other post-employment benefits. Hourly payroll, salary costs and benefits are based on the forecast headcount at the Masardis mill and a payment of accrued vacation pay for former Gorham employees terminated on the closure of the Gorham mill. Other post-employment benefits include approximately CAD \$1,156K to prepay premiums for life insurance coverage for certain salaried retirees and certain former hourly employees of the Thuroo facility.
- 8 DIP Interest and Fees are based on the DIP Loan Financing Agreements of BAM US and include interest and fees relating to the \$5.2 million of outstanding letters of credit.
- 9 There is no capex forecast for the Ashland, Masardis or Gorham mills during the forecast period.
- 10 Other expenses primarily represent professional fees in respect of the CCAA Proceedings including the Applicants' US and Canadian legal counsel, the Monitor and its legal counsel, the claims officer and Davies (representative counsel for employees and former employees not otherwise represented). These fees assume a substantively consolidated plan is developed, presented and finalized during the 19 week period. No costs (excluding professional fees) to implement the plan are included in the CFF.
- 11 DIP Funding represents advances received by the Applicants pursuant to the DIP Loan Financing Agreements with BAM US.
- 12 Cumulative DIP Draws includes the outstanding L/C's, which totalled \$5.2 million as at October 27, 2010.
- 13 The Consolidated 19 Week Cash Flow is denominated in USD. A US\$/C\$ exchange rate of \$0.98 has been assumed during the Cash Flow Forecast period.

**EXHIBIT B**

16.

**Fraser Paper Inc. et al.**  
**Combined 19 Week Cash Flow Forecast**  
**USD (in 000's)**

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Total
Week Beginning	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec	27-Dec	3-Jan	10-Jan	17-Jan	24-Jan	31-Jan	7-Feb	14-Feb	21-Feb	19 Weeks Note 1 and 13
<b>Receipts</b>																				
Collection of Trade Accounts Receivable	2,036	7	2,680	1,193	1,391	1,013	742	801	801	-	-	-	-	-	-	-	-	-	-	14,656 Note 2
Collection of Other Accounts Receivable																				15,051 Note 3
<b>Total Receipts</b>	2,043	7	2,680	1,193	1,391	1,013	742	1,189	801	801	-	-	-	-	-	-	-	-	-	15,051
<b>Disbursements:</b>																				
Raw Material Costs	540	398	577	445	445	445	555	496	496	457	-	-	-	-	-	-	-	-	-	4,853 Note 4
Production Overhead Costs	259	119	141	85	225	85	87	86	226	110	-	-	-	-	-	-	-	-	-	1,422 Note 5
Selling, General & Admin Costs	135	135	135	135	82	82	85	85	85	27	27	27	27	27	27	27	27	27	27	1,281 Note 6
Employee Costs	347	1,355	186	276	247	276	281	269	202	199	14	20	14	20	14	20	14	20	14	3,796 Note 7
DIP Interest & Fees	13	13	23	14	11	11	22	12	10	11	19	9	10	10	11	11	11	12	12	253 Note 8
Capital Expenditures	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	Note 9
Other	583	73	200	-	234	441	185	-	39	294	490	98	-	294	245	318	-	294	245	4,101 Note 10
<b>Total Disbursements</b>	1,876	2,092	1,271	955	1,303	1,340	1,222	947	1,059	1,155	541	163	50	349	295	385	52	351	297	15,706
<b>Net Cash Inflow/Outflow</b>	167	1,197	1,408	238	(2)	(326)	(461)	241	(256)	(354)	(541)	(163)	(50)	(39)	(293)	(385)	(52)	(551)	(297)	(655)
Opening Cash Balance	1,397	1	1,198	1,606	1,345	1,342	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,397
DIP Funding / (Repayments)	(1,563)	-	(1,000)	(500)	500	481	(241)	258	354	541	163	50	349	295	385	52	351	297	772 Note 11	
<b>Closing Cash Balance</b>	1	1,198	1,606	1,345	1,342	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514	1,514
<b>Cumulative DIP Funding Usage</b>	11,683	11,883	10,883	10,383	10,383	11,384	11,123	11,380	11,735	12,276	12,439	13,134	13,518	13,838	13,570	13,921	14,218	14,218	14,218 Note 12	

This cashflow forecast must be read in conjunction with the notes and assumptions attached hereto and the Affidavit of Mr. Glen Mc Millan Sworn on October 27, 2010

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH  
RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS  
HOLDINGS INC., FRASER TIMBER LIMITED., FRASER PAPERS LIMITED AND FRASER N.H. LLC

Applicants

Court File No.: CV-09-8241-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF GLEN MCMILLAN**  
**(SWEORN OCTOBER 28, 2010)**

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# **TAB 3**

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

**THE HONOURABLE** ) **WEDNESDAY, THE 3<sup>RD</sup> DAY**  
                          )  
**MADAM JUSTICE PEPALL** ) **OF NOVEMBER, 2010**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC

Applicants

**ORDER**  
**(Stay Extension, Authorization and Direction re: Plan)**

**THIS MOTION**, brought by the Applicants for the relief sought in the Notice of Motion herein dated October 28, 2010, was heard this day at 330 University Avenue, in the City of Toronto, Ontario.

**ON READING** the affidavit of Glen McMillan sworn October 28, 2010, the Thirteenth Report to the Court of PricewaterhouseCoopers Inc., in its capacity as court-appointed Monitor in this proceeding, filed separately, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Brookfield (US) Corporation, as Initial Lender and

Lender and Brookfield Asset Management Inc., as Administrative Agent and Collateral Agent (collectively “BAM”), counsel for the Communications, Energy and Paperworkers Union of Canada (the “CEP”), counsel for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the “USW”), counsel for the Province of New Brunswick in its various capacities including the Superintendent of Pensions for the Province (the “NB Superintendent”) and Business New Brunswick, counsel for the court-appointed Committee Representing Unrepresented Employees and Former Employees (the “Davies Group”), and no one appearing for any other party on the Service List including Regie des Rentes du Quebec, Morneau Sobeco in its capacity as Administrator appointed by the NB Superintendent in respect of the pension plans registered in the Province of New Brunswick (the “NB Administrator”), the active members of the New Brunswick Regional Council of Carpenters, Millwrights and Allied Workers, Local 2450 (“CMAW”), the Superintendent of Financial Services of Ontario (“FSCO”) and the Pension Benefit Guaranty Corporation, although all duly served as appears from the affidavit of service of Gloria Kalkounis sworn October 28, 2010, filed:

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion and the Motion Record be and it is hereby abridged to the date of actual service, this Motion is properly returnable today and service upon any other party other than those served with the Notice of Motion be and it is hereby dispensed with.
  
2. **THIS COURT ORDERS** that the Stay Period as described in the Order of this Honourable Court dated June 18, 2009, as amended (the “Initial Order”) be, and is hereby extended to and including February 28, 2011.

3. **THIS COURT AUTHORIZES AND DIRECTS** the Applicants to proceed in the preparation of a Plan of Arrangement (the "Plan") on the basis of substantive consolidation of all of the Applicants.
4. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and in the Initial Order, is hereby directed and empowered to provide such advice and assistance to the Applicants as may be requested in the development of the Plan and any amendments to the Plan, in their negotiations with creditors and other interested persons and with the holding and administration of any meetings for voting on the Plan in accordance with any further Order of this Honourable Court with respect to such meetings.
5. **THIS COURT HEREBY REQUESTS** the aid, recognition and assistance of any court, tribunal, regulatory or administrative body in any province or territory of Canada (including pursuant to section 17 of the CCAA), and any judicial, regulatory or administrative body of the United States of America and the federal and state courts of the United States of America to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect and recognition to this Order and to assist the Applicants, the Monitor as an officer of this Court and their respective agents in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO FRASER PAPERS INC./PAPIERS FRASER INC., FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the "Applicants")

Court File No.: CV-09-8241-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
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ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **FRASER PAPERS INC./PAPIERS FRASER INC.**, FPS CANADA INC., FRASER PAPERS HOLDINGS INC., FRASER TIMBER LIMITED, FRASER PAPERS LIMITED and FRASER N.H. LLC (collectively, the Applicants")

Court File No.: CV-09-8241-00CL

*ONTARIO*  
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**MOTION RECORD**  
(RETURNABLE NOVEMBER 3, 2010)

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