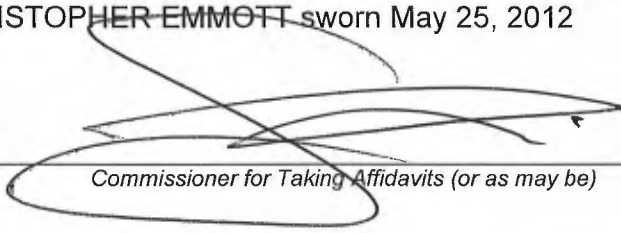


This is Exhibit "H" referred to in the Affidavit of  
CHRISTOPHER EMMOTT sworn May 25, 2012



Commissioner for Taking Affidavits (or as may be)

---

**KRAUS INC.**  
as Borrower

- and -

**STRUDEX FIBRES LIMITED**  
as Guarantor

- and -

**BMO CAPITAL CORPORATION**  
as Lender

---

**AMENDED AND RESTATED CREDIT AGREEMENT**

---

Dated as of November 23, 2010

THIS AMENDED AND RESTATED CREDIT AGREEMENT is made as of the 23<sup>rd</sup> day of November 2010.

B E T W E E N:

**KRAUS INC.** (the "Borrower")

- and -

**STRUDEX FIBRES LIMITED** (the "Company")

- and -

**BMO CAPITAL CORPORATION** (the "Lender")

WHEREAS Kraus Carpet Mills Limited (a predecessor to the Borrower), the Company and the Lender are parties to a credit agreement dated as of July 24, 2007, as amended by amending agreements dated as of June 5, 2008, January 26, 2009 and May 21, 2009 (as amended, the "Original Credit Agreement");

WHEREAS the Borrower and the Lender have agreed to amend and restate the Original Credit Agreement on the terms hereof;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements herein contained the parties hereto agree as follows:

## ARTICLE 1 INTERPRETATION

### Section 1.01 Defined Terms.

As used in this agreement, the following terms have the following meanings:

"**2010 Business Plan**" means the monthly financial projections of the Company and the Restricted Subsidiaries for a portion of Financial Year 2009 and for Financial Year 2010 (including income statements, balance sheets, statements of cash flow, covenant calculations and management's discussion of assumptions and underlying projections), which the Company delivered to the Lender on or about November 23, 2009.

"**2011 Business Plan**" means the monthly financial projections of the Company and the Restricted Subsidiaries for a Financial Year 2011 (including income statements, balance sheets, statements of cash flow, covenant calculations and management's discussion of assumptions and underlying projections).

"**Accounts Receivable**" means, as to any Person, all debts, claims, demands and choses in action, including all book debts and accounts, now due or hereafter to become due,

together with the benefit of all judgements and all other securities for the said debts, claims, demands and choses in action and all proceeds (including, insurance proceeds) and all other rights and benefits in respect thereto to which such Person is now or may hereafter become entitled.

**"Acquisition"** means, with respect to any Person, any transaction or series of related transactions for the direct or indirect (i) acquisition of the Assets of any other Person; (ii) acquisition of any shares, securities, interests, participations or other equivalents (including partnership interests or units) of any Person; or (iii) reconstruction, reorganization, consolidation, wind-up, merger, transfer, sale, lease or other combination with any other Person; and "Acquire" and "Acquired" have meanings correlative thereto.

**"Adjusted Consolidated Basis"** means, for any period or at any time, the results of operations of the Company and its Subsidiaries for such period or at any such time determined on a consolidated basis in accordance with GAAP, but (i) excluding Royal Scot; (ii) excluding the results of operations of any Person that is not a Subsidiary on the last day of such period or at such time, and which would otherwise be included in such consolidated results of operations; and (iii) including the results of operations for such period or at such time of each Person that during such period or at such time, became a Subsidiary of the Company and which is a Subsidiary of the Company on the last day of such period or at such time on a pro forma basis for such period or at such time.

**"Adjusted Consolidated Depreciation and Amortization Expense"** means, for any period, in respect of the Company, depreciation, amortization and other non-cash expenses of the Company and its Restricted Subsidiaries which reduce Consolidated Net Income for such period, determined on an Adjusted Consolidated Basis as of such time.

**"Adjusted Consolidated EBITDA"** means, for any period, in respect of the Company, Adjusted Consolidated Net Income for such period increased, to the extent deducted in the determination of Adjusted Consolidated Net Income for such period, by (i) Adjusted Consolidated Interest Expense; (ii) Adjusted Consolidated Income Tax Expense; (iii) Adjusted Consolidated Depreciation and Amortization Expense; and (iv) donations made by the Company or any Restricted Subsidiary to charities duly registered under the *Income Tax Act* (Canada). Adjusted Consolidated EBITDA shall exclude (i) the amount of any loss on the sale of non-prime inventory incurred by the Company in Financial Year 2010 up to a maximum amount of \$1,000,000 (and any amounts in excess of \$1,000,000 shall be included in the calculation of Adjusted Consolidated EBITDA); and (ii) the amount of any restructuring costs incurred by the Company during Financial Year 2010 up to a maximum amount of \$3,800,000 (and any amounts in excess of \$3,800,000 shall be included in the definition of Adjusted Consolidated EBITDA).

**"Adjusted Consolidated Income Tax Expense"** means, for any period, in respect of the Company, the aggregate of all taxes based on income of the Company and its Restricted Subsidiaries for such period, determined on an Adjusted Consolidated Basis.

**"Adjusted Consolidated Interest Expense"** means, for any period, in respect of the Company and its Restricted Subsidiaries, the sum of (without duplication) (i) all items properly classified upon the consolidated income statement of the Company as interest expense (whether expensed or capitalized) in accordance with GAAP, and (ii) the implied interest component of any element of Debt of the Company and its Restricted Subsidiaries (such as capital leases and deferred



revenue excluding any obligation in respect of any operating lease) which would not be classified as interest expense pursuant to (i), and (iii) all fees and other payments (other than payments of principal) payable by the Borrower or any Restricted Subsidiary in respect of any Debt, in each case determined on an Adjusted Consolidated Basis.

**"Adjusted Consolidated Net Income"** means, with respect to the Company, for any period, and subject as provided in the next following sentence, the net income (loss) of the Company and its Restricted Subsidiaries determined on an Adjusted Consolidated Basis and for greater certainty, Adjusted Consolidated Net Income shall include realized foreign exchange gains or losses. There shall be excluded from any such net income (loss) (i) after-tax gains or losses from asset sales or abandonments or reserves relating thereto, (ii) other after-tax items classified as extraordinary, unusual or nonrecurring gains or losses, (iii) unrealised foreign exchange gains or losses; (iv) any gain or loss from the write-up or write-down of any real property, and (v) any gain or loss from any purchase or redemption of securities.

**"Adjusted Consolidated Senior Debt"** means, in respect of the Company, at any time, the aggregate amount of all Debt of the Company and its Restricted Subsidiaries, other than the Debt of the Borrower pursuant to the Loan, the Debt owing to Kraus Holdco pursuant to the VTB Note, the Eckhardt Debt and the Kraus Debt, determined on an Adjusted Consolidated Basis.

**"Adjusted Consolidated Total Debt"** means, in respect of the Company, at any time, the aggregate amount of all Debt of the Company and its Restricted Subsidiaries excluding the Debt owing to Kraus Holdco pursuant to the VTB Note, the Eckhardt Debt and the Kraus Debt, determined on an Adjusted Consolidated Basis.

**"Adjusted Consolidated Unfunded Capital Expenditures"** means, for any period, in respect of the Company, Capital Expenditures of the Company and its Restricted Subsidiaries, excluding (i) any Capital Expenditures funded by Debt other than Debt owing to the Senior Lenders pursuant to the Senior Credit Agreement, and (ii) Capitalized Lease Obligations, determined on an Adjusted Consolidated Basis.

**"Affiliate"** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**"Agents"** means, collectively, the Canadian Administrative Agent and the U.S. Administrative Agent (as each of such terms are defined in the Senior Credit Agreement).

**"Aggregate Mark-to-Market Exposure"** means the sum of the Market Values (expressed in Canadian Dollars), whether positive or negative, in respect of all Eligible Hedging Agreements and any other interest rate hedges and foreign exchange hedges to which the Company or any Restricted Subsidiary is a party.

**"Agreement"** means this amended and restated credit and guarantee agreement and all schedules thereto, as further amended, supplemented or restated from time to time; and the expressions **"Article"** and **"Section"** followed by a number mean and refer to the specified Article or Section of this Agreement.

**"Annual Business Plan"** means the annual business plan of the Company approved by the board of directors of the Company, prepared on a consolidated basis, with detailed financial projections and budgets on a month to month basis for the following twelve months, in each case consisting of a balance sheet, statement of income, retained earnings, statement of cash flows and proposed Capital Expenditure estimates and a list of assumptions upon which such projections are based.

**"Applicable Law"** means (a) any domestic or foreign statute, law (including common and civil law and equity), treaty, code, ordinance, rule, regulation, decree, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree, voluntary restraint or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, or any provisions of the foregoing, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person.

**"Approved Fund"** means any Fund that is administered or managed by (a) the Lender, (b) an Affiliate of the Lender or (c) an entity or an Affiliate of an entity that administers or manages the Lender.

**"Assets"** means, with respect to any Person, any property, assets and undertakings of such Person of every kind and wheresoever situate, whether now owned or hereafter acquired (and, for greater certainty, includes any equity or like interest of any Person in any other Person).

**"Assignment and Assumption"** means an assignment and assumption entered into by the Lender and an Eligible Assignee in substantially the form of Schedule 2.

**"Australiaco"** means Northstate Carpet Mills PTY Ltd.

**"Authorization"** means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person.

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

**"BMOCC Subordination Agreement"** means the subordination agreement dated as of July 24, 2007, as amended by the amending agreement dated January 26, 2009, and as further amended by amending agreement no. 2 dated as of November 23, 2010, in each case substantially in the form of Schedule 3.

**"Borrower"** means Kraus Inc. and includes its successors.

**"Business"** means the business of manufacturing, marketing, distributing and sale of carpeting, flooring and fibre and new materials related to the manufacturing of carpet and flooring.

**"Business Day"** means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario.

**"Canadian Benefit Plans"** means any plan, fund program, or policy, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, providing employee benefits, including medical, hospital care, dental, sickness, accident, disability, life insurance, pension, retirement or savings benefits, under which the Company or any Restricted Subsidiary has any liability with respect to any employee or former employee, but excluding any Canadian Pension Plans.

**"Canadian Dollars"**, and **"Cdn. \$"** each mean lawful money of Canada.

**"Canadian Pension Plan"** means a pension plan which is a "registered pension plan" as defined in the *Income Tax Act* (Canada), whether or not it is required to be registered under applicable pension benefits legislation in any other Canadian jurisdiction and is applicable to employees resident in Canada of the Company or any Restricted Subsidiary and includes a multiemployer pension plan as defined in applicable pension benefits legislation and registered in any Canadian jurisdiction for employees resident in Canada, but does not include the Canada Pension Plan (maintained by the Government of Canada) and the Quebec Pension Plan (as defined in *An Act Respecting the Quebec Pension Plan* (Quebec)).

**"Canadian Restricted Subsidiary"** means Restricted Subsidiary that was incorporated, continued, amalgamated, merged or otherwise created in accordance with and continues to be governed by the laws of a Province of Canada or the federal laws of Canada.

**"Capital Expenditures"** means, with respect to the Company and its Restricted Subsidiaries, acquisitions or expenditures which would be properly classified in accordance with GAAP as capital expenditures.

**"Capitalized Lease Obligation"** of any Person means any obligation of such Person to pay rent or other amounts under a lease of property, real or personal, moveable or immovable, that is required to be capitalized for financial reporting purposes in accordance with GAAP. For the purpose of this definition, the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP, and the stated maturity of such obligation shall be the last day on which any lease or rental payment thereunder is due prior to the first day upon which such agreement may be terminated by such Person without payment of penalty.

**"Cash Equivalents"** means any of the following: (i) any investment in direct obligations of Canada or any province or agency thereof or obligations guaranteed by Canada or the United States of America or any province or state, as applicable, or any agency thereof, in each case with a remaining term of not more than one year to maturity and at the date of investment rated not less than the Minimum Rating; and (ii) investments in time deposit accounts, term deposit accounts, certificates of deposit, money-market deposits, bankers' acceptances and obligations maturing within one year of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of Canada or any province thereof or of the United States of America or any state thereof, and which bank or trust company has, or the obligation of which bank or trust company is guaranteed by a bank or trust company which has, capital, surplus and undivided profits aggregating in excess of \$250,000,000 and has outstanding debt which at the date of investment is rated not less than the Minimum Rating. For the purpose of this definition, "Minimum Rating" shall mean, for

any obligor, "A" by Standard & Poors Ratings Group, a division of McGraw Hill, Inc. or "A2" by Moody's Investors Service, Inc.

**"Change of Control"** means (i) any Person acting alone or in concert with one or more other Persons, other than the Eckhardt Family, beneficially owns, directly or indirectly, a majority of the votes attached to the Company's securities entitled to vote for the election or appointment of the board of directors of the Company or Persons performing similar functions, or (ii) the Borrower ceases to be a wholly-owned Subsidiary of the Company.

**"Change in Law"** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

**"Claim"** means any claim of any nature whatsoever, including any demand, liability, obligation, cause of action, suit, proceeding, judgment, award, assessment and reassessment.

**"Closing Date"** means July 24, 2007.

**"Collateral"** means the Assets of the Company or any Restricted Subsidiary or any other Person in respect of which the Lender has or will have a security interest pursuant to the Credit Documents.

**"Company"** means Strudex Fibres Limited and its successors.

**"Compensation Cap Period"** means the period from and including 2009 to and including the year in which Kraus Holdco has received in the aggregate \$10,000,000 in payments of principal and interest under the VTB Note.

**"Compensation Compliance Certificate"** means a certificate of a senior officer of the Company identifying compensation to management of the Company in form and substance acceptable to the Lender.

**"Compliance Certificate"** means a certificate of the Senior Officer of the Company, without personal liability, substantially in the form attached hereto as Schedule 1.

**"Consolidated Free Cash Flow"** means, for any particular period, Adjusted Consolidated EBITDA less, to the extent not deducted in calculating Adjusted Consolidated EBITDA for such period, (A) (i) mandatory and scheduled repayments of principal owing pursuant to the Term Credits pursuant to the Senior Credit Agreement during such period, (ii) mandatory principal repayments on the Loan (excluding payments made pursuant to Section 2.04(4)) during such period, (iii) voluntary prepayments of principal to Kraus Holdco to the extent consented to by the Lender in writing during such period; (iv) scheduled repayments of the principal component of Capital Lease Obligations of the Company and the Restricted Subsidiaries; (v) Adjusted Consolidated Interest Expense that was paid in cash during such period, (vi) restructuring costs paid in cash during such period, (vii) Deductible Capex during such period, (viii) pension plan contributions required to be made by applicable Law during such period that are paid in cash and that are in excess of the amounts expensed in the consolidated audited financial statements of the



Company, (ix) Adjusted Consolidated Income Tax Expense to the extent paid or payment in cash during such period, and (x) following the Senior Lender Maturity Date an amount not to exceed \$6,000,000 per Financial Year in respect of the Senior Debt of the Company and the Restricted Subsidiaries and the Subordinate Debt of the Company and the Restricted Subsidiaries other than Debt owing to Kraus Holdco pursuant to the VTB Note (but including for greater certainty, the Loan) until such time as all Debt owing to the Lender by the Company and the Restricted Subsidiaries is paid in full, plus (B) (i) for the duration of the Compensation Cap Period, the amount by which the aggregate compensation to Ryan Eckhardt, Michael Eckhardt, Walter Eckhardt and Harold Eckhardt during such period (being the period of the EBITDA calculation) exceeds \$1,200,000, (ii) Net Proceeds from any Disposition of Assets other than in the ordinary course of business that are not required to be paid to the Senior Lenders or the Lender during such period, and (iii) any income tax recovery received by the Company during such period to the extent that such income tax recovery is not (a) otherwise included in the calculation of Adjusted Consolidated Income Tax Expense, (b) paid to the Lender in accordance with Section 2.04(5) hereof, or (c) paid to the Senior Lenders pursuant to the Senior Credit Agreement.

**"Consolidated Free Cash Flow Certificate"** means a certificate of a senior officer of the Corporation, without personal liability, issued to the Lender in the form attached hereto as Schedule "5".

**"Contested"** means contested in good faith by appropriate proceedings promptly initiated and diligently conducted, and **"Contestation"** shall have an analogous meaning.

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

**"Credit Documents"** means (a) this Agreement, the Security, the Warrant, the Securityholder Agreement, all guarantees delivered by any Credit Party pursuant to this Agreement; and each document, agreement, instrument and certificate delivered to the Lender on the Closing Date or on the Second Closing Date; and (b) all present and future security, agreements, documents, certificates and instruments delivered by any Credit Party to the Lender pursuant to, or in respect of the agreements and documents referred to in clause (a), as delivered from time to time whether prior or after the Second Closing Date; in each case as the same may from time to time be supplemented, amended or restated, and **"Credit Document"** shall mean any one of the Credit Documents.

**"Credit Party"** means the Company, the Borrower and each other Restricted Subsidiary.

**"Debt"** means, with respect to any Person, at any time (without duplication), (i) all indebtedness for borrowed money, including borrowings of commodities, bankers' acceptances, letters of credit or letters of guarantee; (ii) all indebtedness for the deferred purchase price of property acquired by such Person (excluding accounts payable and accrued liabilities arising in the ordinary course of business but including, without limitation, all liabilities created or arising under any conditional sale or other title retention agreement with respect to such property) or services represented by a note or other evidence of indebtedness; (iii) all indebtedness for borrowed money

secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liability, provided that if such Person has not assumed or otherwise become liable for such liability, the amount of such liability shall be the lesser of the monetary value of such liability or the then fair market value of such property); (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the 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); (v) all indebtedness of another Person secured by a Lien on any properties or assets of the Person; (vi) all indebtedness in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money); (vii) the aggregate amount at which any shares in the capital of a Person which are redeemable or retractable at the option of the holder may be retracted or redeemed for cash or Debt prior to the Maturity Date and provided all conditions precedent for such retraction or redemption have been satisfied; (viii) all current indebtedness of such Persons represented by a note, bond, debenture or other evidence of debt; (ix) all Capitalized Lease Obligations; (x) all indebtedness under Other Secured Agreements (as such term is defined in the Senior Credit Agreement) and the Aggregate Mark-to-Market Exposure of all Eligible Hedging Obligations; (xi) other indebtedness upon which interest charges are customarily paid by such Person; and (xii) all Debt Guaranteed by the Person.

**"Debt Guaranteed"** by any Person means the maximum amount which may be outstanding at any time of all Debt of the kinds referred to in (i) through (x) of the definition of Debt which is directly or indirectly guaranteed by the Person or which the Person has agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which the Person has otherwise assured a creditor or other Person against loss.

**"Deductible Capex"** means Adjusted Consolidated Unfunded Capital Expenditures for the Financial Year 2010 and thereafter subject to the following maximum amounts for each Financial Year:

2010	-	\$2,000,000
2011	-	\$2,500,000
2012	-	\$3,000,000
Each Financial Year thereafter	-	\$4,000,000

The positive difference, if any, between the maximum amount designated above in any Financial Year and the actual Adjusted Consolidated Unfunded Capital Expenditures made in such Financial Year may be carried forward to the subsequent Financial Year. For certainty, unused Adjusted Consolidated Unfunded Capital Expenditures may only be carried forward one Financial Year.

**"Default"** means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

**"Disposition"** means with respect to any Asset of any Person, any direct or indirect sale, lease (where such Person is the lessor of such Asset), assignment, cession, transfer (including

any transfer of title or possession), exchange, conveyance, release or gift of such Asset, including by means of a sale-leaseback transaction or a receivable or inventory securitization, or any reorganization, consolidation, amalgamation or merger of such Person pursuant to which such Asset becomes the property of any other Person, but shall exclude donations to charities duly registered under the *Income Tax Act* (Canada); and “**Dispose**” and “**Disposed**” have meanings correlative thereto.

“**Distribution**” means (i) any dividend or other distribution, direct or indirect, on account of any equity units or Shares of any class of the Company or any Restricted Subsidiary, except a dividend payable solely in equity units or Shares (other than Shares or units redeemable or retractable at the option of the holder for cash or Debt prior to the Maturity Date) to holders of equity units or Shares of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition by the Company or any Restricted Subsidiary for value, direct or indirect, of any equity units or Shares in its own capital (other than any redemption, retirement, sinking fund or similar payment by way of issuance of equity units or Shares (other than Shares or units redeemable or retractable at the option of the holder for cash or Debt prior to the Maturity Date)); (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any equity units or Shares in its own capital; (iv) any payment or prepayment of principal of, premium or interest on, or any redemption, purchase, retirement, defeasance (including in substance legal defeasance), sinking fund or similar payment with respect to the VTB Subordinated Debt, the Eckhardt Debt or the Kraus Debt; (v) any bonus payment or comparable payment, or any gift or other gratuity, or Investment to or in any Affiliate of the Company or any Restricted Subsidiary, or to any Affiliate or any partner of the Company or any Restricted Subsidiary, or to any director or officer of the Company or any Restricted Subsidiary or of any such Affiliate; and (vi) any donations to any charity, whether or not such donations are recorded as expenses on an income statement (but “Distribution” shall not, in any case, include any transaction described in (i) to (iv) between or among the Company and any Restricted Subsidiary).

“**Eckhardt Debt**” means indebtedness owing by the Company to Anneleen Eckhardt and Harold Eckhardt.

“**Eckhardt Family**” means (i) any or all of Walter, Michael, Ryan and Harold Eckhardt (“**Eckhardt**”); (ii) his spouse; (iii) any lineal descendant of Eckhardt (including any legally adopted descendant); (iv) the estate of any Person listed in clauses (i) to (iii); (v) any trust primarily for one or more of the lineal descendants of Eckhardt, spouses of such lineal descendants, Eckhardt himself or any spouse of Eckhardt, provided that one or more of the Persons listed in clauses (i) to (iii) retain dispositive control of such trust; and (vi) any charitable trust settled by any one or more of the Persons listed in clauses (i) to (iii) over which any such Person retains or Persons retain dispositive control.

“**Eckhardt Subordination Agreement**” means the subordination agreement dated as of January 26, 2009 among Anneleen Eckhardt, Harold Eckhardt, the Company and the Lender.

“**Eligible Assignee**” means any Person (other than a natural person, the Company or any Restricted Subsidiary or any Affiliate of the Company or any Restricted Subsidiary), in respect of which any consent that is required by Section 12.01(b) has been obtained.

**"Eligible Hedging Agreements"** means one or more agreements (including, if applicable, any interest rate swap, cap or collar) between the Company or any Restricted Subsidiary and one or more of the Senior Lenders or any Affiliate of any Senior Lender (the **"Hedge Lenders"**) evidenced by a form of agreement approved by the International Swaps and Derivatives Dealers Association Inc. (or other form approved by the Agents) using the full two-way payment method to calculate amounts payable thereunder and evidencing (i) any interest rate hedge (including any interest rate swap, cap or collar); or (ii) any foreign exchange hedge, in such case, in respect of which payments or settlement shall be made in cash only; provided that any such hedging agreements entered into by the Company or any Restricted Subsidiary and any Person at the time that such Person was a Senior Lender shall continue to be an Eligible Hedging Agreement notwithstanding that such Person ceases, at any time, to be a Senior Lender.

**"Employee Benefit Plan"** means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed to by, any U.S. Restricted Subsidiary, any of its Subsidiaries or any of their respective ERISA Affiliates.

**"Environmental Laws"** means all Applicable Laws relating to the environment, health and safety matters or conditions, Hazardous Substances, pollution or protection of the environment, including Laws relating to (i) on site or off-site contamination; (ii) occupational health and safety relating to Hazardous Substances; (iii) chemical substances or products; (iv) Releases of pollutants, contaminants, chemicals or other industrial, toxic or radioactive substances or Hazardous Substances into the environment; and (v) the manufacture, processing, distribution, use, treatment, storage, transport or handling of Hazardous Substances.

**"Environmental Liabilities"** means, in respect of any Person, Losses and Claims of such Person under applicable Environmental Laws, whether known or unknown, current or potential, past, present or future, imposed by, under or pursuant to Environmental Laws or otherwise relating to any environmental condition, fact or circumstance requiring Remedial Action under any Environmental Law, including Losses and Claims related to Remedial Actions and all reasonable fees, disbursements and expenses of counsel, experts, personnel and consultants, where such Losses and Claims are based on, arise out of or are otherwise in respect of (i) the ownership or operation of the business of such Person or any Assets related to such business; (ii) the conditions on, under, above or about any real property, assets, equipment or facilities currently or previously owned, leased or operated by the Person or any subsidiary of the Person; (iii) expenditures necessary to cause the operations of the business or Assets either related to such business or owned, leased or operated by the Person to comply with any and all environmental requirements, including expenditures in connection with obtaining all Environmental Permits; (iv) expenditures necessary to effect the environmental closure, environmental decommissioning or environmental rehabilitation of any of the operations of the business or Assets of such Person either related to such business or owned, leased or operated by the Person or any subsidiary of the Person; (v) liability for personal injury or property damage, including damages assessed for the maintenance of a public or private nuisance; and (vi) any other matter affecting the real property, assets, equipment or facilities of the Person or any subsidiary of the Person, whether owned or leased, relating to any Environmental Law or otherwise within the jurisdiction of a Governmental Authority arising through its administration of any Environmental Law.



**"Environmental Permits"** includes all permits, certificates, approvals, registrations and licences issued by any Governmental Authority to the Company or any of its Subsidiaries or to the Business pursuant to Environmental Laws and are required for the operation of the Business or use of the Owned Properties or Leased Properties or other Assets.

**"Equivalent Amount"** means, on any date, with respect to the specified amount of any specified currency the amount of any other currency after giving effect to a conversion of the specified amount of the first currency to the other currency at the spot rate quoted for wholesale transactions by BMO (or, if BMO does not provide such spot rate quotation, a quoted rate from another financial institution selected by the Lender).

**"ERISA"** means the *Employee Retirement Income Security Act* of 1974.

**"ERISA Affiliate"** means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 4149m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of any U.S. Restricted Subsidiary shall continue to be considered an ERISA Affiliate of such U.S. Restricted Borrower within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such U.S. Restricted Subsidiary and with respect to liabilities arising after such period for which such U.S. Restricted Subsidiary could be liable under the Internal Revenue Code or ERISA.

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

**"Excluded Taxes"** means (a) taxes imposed on or measured by its net income or capital, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized, resident for income tax purposes, or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, and (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is resident for income tax purposes or is located.

**"Fees"** means the fees payable by the Borrower under this Agreement or any other Credit Document.

**"Financial Quarter"** means in respect of any Financial Year, a period of three consecutive months in each Financial Year ending March 31, June 30, September 30 and December 31, as the case may be, of such year.

**"Financial Year"** means in relation to the Company, its financial year commencing January 1 of each calendar year and ending on December 31 of such calendar year.

**"Fixed Charge Coverage Ratio"** means, at any date of determination, the ratio of (A) Adjusted Consolidated EBITDA less (i) Adjusted Consolidated Income Tax Expense paid or

payable in cash; and (ii) Adjusted Consolidated Unfunded Capital Expenditures, to (B) Adjusted Consolidated Interest Expense (excluding deferred interest) plus (i) all scheduled principal payments in respect of Adjusted Consolidated Total Debt; (ii) all scheduled principal payments in respect of Debt owing to Kraus Holdco pursuant to the VTB Note; (iii) all scheduled principal payments in respect of the Eckhardt Debt, (iv) all scheduled principal payments in respect of the Kraus Debt, and (v) Capitalized Lease Obligations, in each case, for the most recently completed twelve month period.

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

**"GAAP"** means at any time, accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants at the relevant time applied on a consistent basis (except for changes made with the prior written consent of the Lender and approved by the Company's independent auditors in accordance with promulgations of the Canadian Institute of Chartered Accountants).

**"Georgia Property"** means the property located at 2216 Abutment Road, Dalton, Georgia.

**"Governmental Authority"** means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

**"Grantor"** means any Person who has provided Security to the Lender.

**"Hazardous Substance"** means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy, plasma and organic or inorganic matter, alone or in any combination which is regulated under any applicable Environmental Laws as hazardous waste, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination under any Environmental Law.

**"Hedge Lenders"** has the meaning specified in the definition of Eligible Hedging Agreements herein.

**"Impermissible Qualification"** means, in respect of any Person relative to the opinion or report of any independent auditors as to any financial statements of such Person, any qualification or exception to such opinion or report which is of a "going concern" or similar nature.

**"Indemnified Taxes"** means Taxes other than Excluded Taxes.

**"Intellectual Property"** means all trade-marks, trade-names, brands, trade dress, business names, uniform resource locators, domain names, tag lines, designs, graphics, logos and

other commercial symbols and indicia of origin, goodwill, patents and inventions, copyrights, industrial designs, and other intellectual property rights, whether registered or not or the subject of a pending application for registration, owned by or licensed to the Company or any Restricted Subsidiary.

**"Investment"** means, with respect to any Person, any direct or indirect investment in or purchase or other acquisition of the securities of or an equity interest in any other Person, any loans, advances, guarantees, or arrangement for the purpose of providing funds or credit to (excluding trade accounts receivable or extensions of trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to (whether by means of a transfer of cash or other property or any payment for property or services for the account or use of) any other Person, or any purchase or other acquisition of all or substantially all of the property of any other Person.

**"Kraus Debt"** means all amounts owing by the Borrower to Anneleen Eckhardt Holdings Limited pursuant to a re-issued promissory note dated November 23, 2010 issued by the Borrower in the aggregate principal amount of \$2,342,750.00, such promissory note replacing a promissory note issued by Kraus Carpet Mills Limited (now the Borrower) dated May 9, 2005 in the aggregate principal amount of \$2,342,750.00.

**"Kraus Holdco"** means Nelson Kraus Holdings Limited.

**"Kraus JV"** means Kraus Floors LLC.

**"Kraus Subordination Agreement"** means the subordination agreement dated as of November 23, 2010 among Anneleen Eckhardt Holdings Limited, the Borrower and the Lender

**"Landlord Waiver"** means an agreement from each landlord of each Leased Property in favour of the Lender, in form and substance satisfactory to the Lender.

**"Laws"** means (a) any domestic or foreign statute, law (including common and civil law and equity), treaty, code, ordinance, rule, regulation, decree, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree, voluntary restraint or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, or any provisions of the foregoing, binding on or affecting the Person referred to in the context in which the term is used, or binding on or affecting the property of such Person.

**"Leased Properties"** means, collectively, the real properties forming the subject matter of the Leases.

**"Leases"** means the leases, subleases, right to occupy, and licences of real property or buildings and fixtures, to which the Company or any Restricted Subsidiary is a party as lessee (other than equipment leases) (i) at the date of this Agreement, as listed and described under the heading "Leased Properties" in Schedule 5.01(i); or (ii) after the date of this Agreement, as notified to the Lender pursuant to Section 6.01(b), but shall exclude leases, rights and licences terminated in

accordance with their terms (and not as a result of a default) after the date of this Agreement and as and from such termination.

**"Lender"** means BMO Capital Corporation and its successors.

**"Licensed Intellectual Property"** means the Intellectual Property specified in Schedule 5.01(w) as such Schedule may be updated in accordance with this Agreement.

**"Lien"** means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any particular property that is prior to the right of any other creditor in respect of such property, and includes the right of a lessor relative to a Capitalized Lease Obligation.

**"Loan"** means the loan in the principal amount of \$10,000,000 advanced by the Lender to the Borrower on the Closing Date and which is (including principal, capitalized interest and accrued interest) in the amount of \$15,917,931.01 on the Third Closing Date, as such amount may be increased following the date of this Agreement as a consequence of the capitalizing of interest.

**"Loss"** means any loss whatsoever, whether direct or indirect, including expenses, costs, damages, judgments, penalties, fines, charges, claims, demands, liabilities and any and all legal fees and disbursements, except any such loss representing loss of profit.

**"Market Values"** means, in respect of any Eligible Hedging Agreement and on any other interest rate hedge or foreign exchange hedge, on any day, the amount (whether positive or negative) expressed in Canadian Dollars determined by a lender (or non-lender party thereto, if applicable) in good faith at mid-market levels in accordance with its customary practices as of the close of business on such day as though such day were an "Early Termination Date", each "Transaction" was a "Terminated Transaction" and the lender (or other counterparty, as applicable) was the non-defaulting party in accordance with the payment measure provided for in Section 6(e)(i)(3) of the 1992 ISDA Master Agreement. "Early Termination Date", "Transaction" and "Terminated Transaction" have the respective meanings ascribed thereto in the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

**"Material Adverse Effect"** shall mean at any time a material adverse effect on the Business (as in effect at such time or as then reasonably anticipated to be in effect at any time thereafter), property or financial condition of the Company and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of the Company or any Restricted Subsidiary or any other Person to perform its obligations under any of the Credit Documents to which it is a party or on the ability of the Lender to enforce such obligations thereunder.

**"Material Contracts"** means, collectively, the agreements entered into by the Company or any Restricted Subsidiary, the breach, non-performance or cancellation of which or the failure of which to renew could reasonably be expected to have a Material Adverse Effect.



447

**"Material Permits"** means, collectively, the Permits issued or obtained by the Company or any Restricted Subsidiary, the termination or failure to renew of which could reasonably be expected to have a Material Adverse Effect.

**"Material Subsidiary"** means all Restricted Subsidiaries other than any Subsidiary as agreed by the Lender and the Borrower.

**"Maturity Date"** means January 24, 2015.

**"Net Proceeds"** means any one or more of the following: (i) with respect to any Disposition of Assets by the Company or any Restricted Subsidiary, the net amount equal to the aggregate amount received in cash (including any cash received by way of deferred payment pursuant to a note, receivable, other non-cash consideration or otherwise (including, without limitation, the release of any amounts from an indemnity reserve or similar fund established in connection with such Disposition), but only as and when such cash is so received) in connection with such Disposition, less the sum of (y) reasonable fees (including, reasonable legal fees), commissions and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Lender upon request therefor) incurred or paid for by the Company or any Restricted Subsidiary in connection with such Disposition, and (z) taxes incurred in connection with such Disposition, whether payable (in accordance with such Person's current tax account) at such time or thereafter; (ii) with respect to the receipt of proceeds under any insurance policy (other than business interruption insurance), the net amount equal to the aggregate amount received in cash in connection with such receipt of insurance proceeds less the reasonable fees (including, without limitation, reasonable legal fees), costs and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Lender upon reasonable request therefor by the Lender) incurred or paid for by the Company or any Restricted Subsidiary in connection with the claim under the insurance policy giving rise to such proceeds; and (iii) with respect to the issuance of any Shares by the Company or any Restricted Subsidiary, or any capital contributions by any Person to the Company or any Restricted Subsidiary, the amount equal to the aggregate amount received in cash in connection with such issuance or contribution less the reasonable fees (including, without limitation, reasonable legal fees), costs and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Lender upon reasonable request therefor by the Lender) incurred or paid for by the Company or any Restricted Subsidiary in connection with the transaction giving rise to such proceeds.

**"Obligations"** means, with respect to any Credit Party, all of its present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon after or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender under, in connection with, relating to or with respect to each of the Credit Documents. Obligations includes, for certainty, all indebtedness and liabilities that may be due or owing at any time by the Company and/or the Borrower in connection with the Warrant and/or the Securityholder Agreement.

**"Original Currency"** has the meaning specified in Section 13.02(a).

**"Other Currency"** has the meaning specified in Section 13.02(a).

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

**"Owned Intellectual Property"** means the Intellectual Property specified in Schedule 5.01(v) as such Schedule may be updated in accordance with this Agreement.

**"Owned Properties"** means, collectively, (i) the land and premises owned by the Company or any Restricted Subsidiary on the date of this Agreement which are listed under the heading "Owned Properties" in Schedule 5.01(i); and (ii) after the date of this Agreement, the lands and premises notified to the Lender pursuant to Section 6.01(b), but shall exclude lands and premises sold or otherwise disposed of as permitted in this Agreement as and from the date of such sale or disposition.

**"Parent Entity"** has the meaning specified in Section 2.07(1)(v).

**"Participant"** has the meaning assigned to such term in Section 12.01(c).

**"Pension Plan"** means (i) any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA, (ii) any Canadian Pension Plan and (iii) any pension plan governed by the Laws of any other jurisdiction.

**"Permits"** means, collectively, permits, licences, approvals, franchises, rights-of-way, easements and entitlements.

**"Permitted Liens"** means, in respect of any Person at any time, the following:

- (a) Liens for taxes, rates, assessments or other governmental charges or levies the payment of which is not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person and in respect of which it has made arrangements for payment satisfactory to the Lender;
- (b) undetermined or inchoate Liens, rights of distress and charges incidental to current operations which have not at such time been filed or exercised and of which the Lender has not been given notice, or which relate to obligations not due or payable or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (c) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grant of real or immovable property, or interests therein,

which do not in the opinion of the Lender, materially affect the use of the affected land for the purpose for which it is used by that Person;

- (d) licences, permits, reservations, covenants, servitudes, easements, rights-of-way and rights in the nature of easements (including, without limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for sidewalks, public ways, sewers, drains, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) and zoning, land use and building restrictions, by-laws, regulations and ordinances of federal, provincial, regional, state, municipal and other governmental authorities, which will not in the opinion of the Lender, materially impair the use of the affected land for the purpose for which it is used by that Person;
- (e) title defects, encroachments or irregularities which are of a minor nature and which in the aggregate will not in the opinion of the Lender, materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any Governmental Authority by the terms of any lease, license, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Liens resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, unemployment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (h) Liens given to a public utility or any governmental authority when required by such utility or governmental authority in connection with the operations of that person in the ordinary course of its business;
- (i) the Security;
- (j) the Senior Security;
- (k) letters of credit and cash collateral provided by the Company or any Restricted Subsidiary to secure cash management accounts with financial institutions other than the Senior Lenders; ~~provided that commencing on the date that is 30 days from the~~ date of the Senior Credit Agreement, the aggregate amount of such letters of credit and cash collateral shall not exceed \$250,000;
- (l) the VTB Security; and
- (m) Liens securing Purchase Money Security Interests and Capitalized Lease Obligations in an amount not to exceed \$2,500,000.

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

“**PBGC**” means the Pension Benefit Guaranty Corporation or any successor thereto.

“**Purchase Money Security Interests**” means a Lien created or assumed by a Credit Party securing Debt incurred to finance the unpaid acquisition price of personal property provided that (a) such Lien is created concurrently with or prior to the acquisition of such personal property, (b) such Encumbrance does not at any time encumber any property other than the property financed or refinanced (to the extent the principal amount is not increased) by such Debt and to proceeds thereof, (c) the amount of Debt secured thereby is not increased subsequent to such acquisition, and (d) the principal amount of Debt secured by any such Lien at no time exceeds 100% of the original acquisition price of such personal property at the time it was acquired.

“**Regulatory Approvals**” means all necessary approvals, registrations, permits, sanctions, rulings, orders, exemptions or consents from any Governmental Authority within or outside of Canada (including, without limitation, the lapse, without objection, of a prescribed time under a statute or regulation that states that a transaction may be implemented if a prescribed time lapses following the giving of notice without an objection being made) required to enable the Company and its Subsidiaries to carry on the Business.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Release**” when used as a verb includes release, spill, leak, emit, deposit, discharge, leach, migrate or dispose into the environment and the term “**Release**” when used as a noun has a correlative meaning, but does not include any release, spill, leak, emission, deposit, discharge, leach, migration or disposition pursuant to a valid Environmental Permit or in accordance with Environmental Laws.

“**Relevant Jurisdiction**” means (i) for the purposes of Section 7(3) of the *Personal Property Security Act* (Ontario), and the similar provisions of the *Personal Property Security Act* of each other province (other than Quebec) and of the Uniform Commercial Code of the United States of America, each jurisdiction (or registration district within such jurisdiction) in which any of the Company and the Restricted Subsidiaries has a place of business, chief executive office or any Assets with an aggregate value that exceeds the lesser of (x) 5% of Adjusted Consolidated EBITDA for the immediately preceding four Financial Quarters, and (y) 5% of the value of the Assets of the Company determined on an Adjusted Consolidated Basis, provided that the aggregate value of Assets of the Company and the Restricted Subsidiaries located in jurisdictions where the Liens granted by the Security have been perfected by registration shall at all times be greater than 95% of the value of the Assets of the Company determined on an Adjusted Consolidated Basis, (ii) the jurisdiction of formation of the Company and each Restricted Subsidiary.

“**Remedial Action**” means any action required under any applicable Environmental Law to (i) clean up, remove, treat or in any other way deal with Hazardous Substances in the environment; (ii) prevent any release of Hazardous Substances where such release would violate any Environmental Laws or would endanger or threaten to endanger public health or welfare of the environment; or (iii) perform remedial studies, investigations, restoration and post-remedial studies,



investigations and monitoring on, about or in connection with any of the Owned Properties, the Leased Properties or other Assets of the Company and its Subsidiaries.

**"Restricted Subsidiaries"** means the Subsidiaries of the Company and individually, any one of them.

**"Royal Scot"** means Royal Scot Floorcovering Distribution LLC.

**"Second Closing Date"** means January 26, 2009.

**"Security"** means all guarantees, security agreements, mortgages, debentures and other documents delivered to the Lender on or prior to the Third Closing Date (including the documents identified in Section 2.07) and all other documents and agreements delivered by the Company or any Restricted Subsidiary to the Lender from time to time as security for the payment and performance of the Obligations.

**"Securityholder Agreement"** means the amended and restated securityholder agreement dated as of November 23, 2010 among, *inter alia*, the Company, the Borrower and the Lender, providing for rights in favour of the holder of the Warrant, as such agreement may be amended, restated, supplemented or replaced from time to time.

**"Security Documents"** means the agreements described in Section 2.07 and any other security (including guarantees) granted to the Lender from time to time as security for the obligations of the Company or any Restricted Subsidiary under the Credit Documents.

**"Senior Credit Agreement"** means the credit agreement dated as of June 28, 2007 between the Borrowers (as defined therein), National Bank of Canada as Canadian administrative agent, Bank of Montreal, as U.S. administrative agent, and the Senior Lenders, as such agreement has been amended by a first, second, third and fourth amending agreements on or prior to the Third Closing Date as such agreement may be further amended, supplemented or restated from time to time.

**"Senior Credit Documents"** means the Senior Credit Agreement, the Senior Security and all other agreements, documents, instruments and assurances required or contemplated therein to be provided by the Company or any Restricted Subsidiary to the Agents and/or the Senior Lenders.

**"Senior Debt"** means all Debt owing by the Company and the Restricted Subsidiaries to the Agents and the Senior Lenders pursuant to the Senior Credit Documents, but subject to limitations provided for in the BMOCC Subordination Agreement.

**"Senior Debt to EBITDA Ratio"** means the ratio of Adjusted Consolidated Senior Debt to Adjusted Consolidated EBITDA.

**"Senior Lender Maturity Date"** means June 28, 2012 or (i) such earlier date as the Senior Credit Agreement is repaid in full and all commitments thereunder have been terminated; or (ii) such other date as the maturity date in the Senior Credit Agreement may be extended to.

**"Senior Lenders"** means each lender from time to time party to the Senior Credit Agreement.

**"Senior Officer"** means any one of the Chairman of the Board, the President, the Chief Executive Officer, the Chief Financial Officer and the Vice President - Finance.

**"Senior Security"** means all guarantees, security agreements, mortgages, debentures and other documents delivered to the Senior Lenders on or prior to the Third Closing Date and all other documents and agreements delivered by the Company or any Restricted Subsidiary to the Agents or the Senior Lenders or both from time to time as security for the obligations of the Company or any Restricted Subsidiary under the Senior Credit Documents.

**"Share Purchase Agreement"** means the agreement dated as of June 11, 2007 among Anneleen Eckhardt Holdings Limited, Kraus Holdco, the Company and Northstate Carpet Mills Pty Ltd.

**"Shares"**, as applied to the shares of any corporation or other entity, means the shares or other ownership interests of every class whether now or hereafter authorized, regardless of whether such shares or other ownership interests shall be limited to a fixed sum or percentage with respect to the rights of the holders thereof to participate in dividends and in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding-up of such corporation or other entity.

**"Subject Properties"** means collectively, the Owned Properties and the Leased Properties.

**"Subsidiary"** means, at any time, as to any Person, any corporation, company or other Person, if at such time the first mentioned Person owns, directly or indirectly, securities or other ownership interests in such corporation, company or other Person having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such corporation, company or other Person.

**"Tangible Net Worth"** of the Company, on an Adjusted Consolidated Basis determined in accordance with GAAP, means, at any particular time, without duplication, the sum of: (i) capital stock; (ii) preferred stock; (iii) paid-in capital; (iv) retained earnings; and (v) VTB Subordinated Debt; less the sum of any amounts shown on account of any (A) Debt owing by any of the borrowers under the Senior Credit Agreement (each a **"Credit Borrower"**) to another Credit Borrower; (B) Investments in any Affiliate; (C) deferred charges and costs; (D) trade-marks, trade names, copyrights, patents, patent applications, service marks, industrial designs, licences; and (E) goodwill and other intangibles.

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

**"Term Credits"** means the non-revolving term credit facilities made available to the Company pursuant to the Senior Credit Agreement.

453

**"Third Closing Date"** means November 23, 2010.

**"Total Debt to EBITDA Ratio"** means the ratio of Adjusted Consolidated Total Debt to Adjusted Consolidated EBITDA.

**"U.S. Restricted Subsidiary"** means a Restricted Subsidiary that was incorporated, continued, amalgamated, merged or otherwise created in accordance with and continues to be governed by the laws of any state of the United States of America.

**"VTB Note"** means the amended and restated promissory note dated November 23, 2010 granted by the Company in favour of Kraus Holdco (including the terms of the "Amending Agreement" referenced therein).

**"VTB Security"** means the Lien on the Shares in the capital of the Company granted by Anneleen Eckhardt Holdings Limited in favour of Kraus Holdco and Liens over all assets of the Company and Restricted Subsidiaries in favour of Kraus Holdco, in each case to secure the VTB Subordinated Debt provided that such Liens are subject to the provisions of the VTB Subordination Agreement.

**"VTB Subordinated Debt"** means, at any time, Debt of the Company at such time outstanding under the VTB Note and any security granted in respect of thereof that is contractually subordinated and junior in right of payment to the Obligations and any other amounts payable under any Credit Document pursuant to the terms of the VTB Subordination Agreement.

**"VTB Subordination Agreement"** means the amended and restated subordination agreement substantially in the form of Schedule 4.

**"Warrant"** means the fully assignable warrant issued by the Company to the Lender with respect to the option to purchase for a nominal price 15% (subject to adjustments as provided for therein) of the equity of the Company on a fully diluted basis, as such warrant may be amended, restated, supplemented or replaced from time to time.

**"Waterloo Property"** means the property located at 65 Northfield Drive West, Waterloo, Ontario (PIN No. 22280-0071).

#### **Section 1.02 Gender and Number.**

Any reference in the Credit Documents to gender includes all genders, and words importing the singular number only include the plural and vice versa.

#### **Section 1.03 Interpretation not Affected by Headings, etc.**

The provisions of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

#### **Section 1.04 Currency.**

All references in the Credit Documents to dollars or \$, unless otherwise specifically indicated, are expressed in Canadian currency.

#### **Section 1.05 Certain Phrases, etc.**

In any Credit Document (i) (y) the words "including" and "includes" mean "including (or includes) without limitation" and (z) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of", (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to (or until) but excluding"; and (iii) the word "calculated" shall mean calculated and not compounded.

#### **Section 1.06 Accounting Terms.**

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP from time to time; provided, however, that if the Company notifies the Lender that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender notifies the Company that it requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

#### **Section 1.07 Non-Business Days.**

Subject as otherwise provided in this Agreement, whenever any payment is stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, provided that if the Maturity Date is a date which is not a Business Day, any payment to be made on the Maturity Date shall be made on the preceding Business Day.

#### **Section 1.08 Incorporation of Schedules.**

The schedules attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

#### **Section 1.09 Knowledge.**

Any reference to the knowledge of any Person shall mean to the best of the knowledge, information and belief of such Person after reviewing all relevant records and making due inquiries regarding the relevant matter of all relevant directors, officers and employees of such Person.

**Section 1.10 Reference to Lender.**

Any reference in any Credit Document to the Lender shall be construed so as to include its permitted successors, transferees or assigns hereunder in accordance with its respective interests.

**Section 1.11 References to Time of Day.**

Except as otherwise specified herein, a time of day shall be construed as a reference to Toronto, Canada time.

**Section 1.12 References to Applicable Laws.**

Except as otherwise provided herein, any reference in any Credit Document to Laws shall be construed to be a reference to such Laws as the same may have been, or may from time to time be, enacted, promulgated, amended, reformed or otherwise modified or re-enacted from time to time.

**Section 1.13 References to Agreements.**

Except as otherwise provided herein, any reference to any Credit Document to this Agreement, any other Credit Document or any other agreement or document shall be construed to be a reference to this Agreement, such Credit Document or such other agreement or document, as the case may be, as the same may have been, or may from time to time be, amended, varied, restated or supplemented.

**ARTICLE 2  
THE LOAN****Section 2.01 Establishment of Loan.**

On the Closing Date the Lender advanced \$10,000,000 to the Borrower. On the Third Closing Date, the outstanding indebtedness under the Loan is \$15,917,931.01. No amounts repaid under the Loan may be reborrowed.

**Section 2.02 Use of Proceeds.**

The Borrower used the proceeds of the Loan on the Closing Date to repay in full the \$10,000,000 bridge facility made available pursuant to the Senior Credit Agreement.

**Section 2.03 Mandatory Repayments.**

The Borrower shall repay to the Lender (subject to the terms hereof and specifically Section 7.01) all outstanding Obligations (except those Obligations relating to the Warrant to the extent not due on such date) on the Maturity Date.



## Section 2.04 Mandatory Prepayments.

(1) Subject to the repayment obligations to the Senior Lenders pursuant to the Senior Credit Agreement, an amount equal to the Net Proceeds from any Disposition of any Assets consisting of fixed assets permitted pursuant to Section 6.03(e)(ii) and (iii) by the Company or any Restricted Subsidiary shall be applied within 120 days of the completion of such Disposition during which such Net Proceeds were received by or on behalf of the Company or such Restricted Subsidiary, as the case may be, thereof, in each case, in accordance with Section 2.06(2) hereof, except to the extent that the Net Proceeds from such Disposition of Assets are reinvested (other than in cash or Cash Equivalents), used or committed to be used in the Business within 120 days of the completion of such Disposition.

(2) Subject to the repayment obligations to the Senior Lenders pursuant to the Senior Credit Agreement, an amount equal to the Net Proceeds of any insurance maintained by the Company or any Restricted Subsidiary received by the Company or any Restricted Subsidiary on account of each separate loss, damage or injury to any part of its Assets or Business (unless such proceeds or an amount not less than such proceeds shall have been expended or committed by the Company or such Restricted Subsidiary for the repair or replacement of such Assets or Business within 180 days after the last day of the Financial Quarter during which such Net Proceeds were received by or on behalf of the Company or such Restricted Subsidiary, the Company or such Restricted Subsidiary shall have furnished to the Lender evidence satisfactory to the Lender of such expenditure or commitment and confirmed in a manner satisfactory to the Lender that such proceeds are subject to a security interest in favour of the Lender) shall be applied within 180 days after last day of the Financial Quarter during which such Net Proceeds were received by or on behalf of the Company or any Restricted Subsidiary, as the case may be, thereof, in each case in accordance with Section 2.06(2) hereof.

(3) Subject to the repayment obligations to the Senior Lenders pursuant to the Senior Credit Agreement, an amount equal to 100% of the Net Proceeds of the issuance of all Shares by the Company and any Restricted Subsidiary to any Person other than the Company or any Restricted Subsidiary, or of any capital contributions by any Person other than the Company or any Restricted Subsidiary to the Company or any Restricted Subsidiary shall be applied forthwith upon receipt by or on behalf of the Company or any Restricted Subsidiary in accordance with Section 2.06 hereof.

(4) Commencing with Financial Year 2011 and provided that for each subsequent Financial Year (i) the Senior Debt to EBITDA Ratio for such Financial Year is less than 3.0:1, (ii) the Fixed Charge Coverage Ratio for such Financial Year is equal to or greater than 1.2:1, and (iii) the Total Debt to EBITDA Ratio for such Financial Year is less than 4.0:1, an amount equal to half of 60% of Consolidated Free Cash Flow shall be applied by the Borrower as a prepayment of the Loan. Such calculation and payment, if applicable, shall be made no later than 120 days following the end of each Financial Year of the Company. The other half of the 60% of Consolidated Free Cash Flow shall be paid against indebtedness owing pursuant to the VTB Note but subject to the terms of the VTB Subordination Agreement. For greater certainty: (i) an amount less than half of 60% of Consolidated Free Cash Flow shall be applied as a prepayment of the Loan or paid pursuant to the VTB Note, as applicable, by the Borrower to the extent possible provided that such prepayment does not result in non-compliance of the Senior Debt to EBITDA Ratio or the Total Debt to EBITDA Ratio set forth in this Section 2.04(4), (ii) the payments set out in this Section

2.04(4) are one time only payments in connection with a respective Financial Year and any amounts not paid as a result of the foregoing covenants shall not be carried forward to the next Financial Year or in any way form an outstanding obligation of the Company to either the Lender or Kraus Holdco, as holder of the VTB Note, (iii) for purposes of the prepayments set out in this Section 2.04(4) the Senior Debt to EBITDA Ratio, the Fixed Charge Coverage Ratio, and the Total Debt to EBITDA Ratio shall be determined based on the financial results at the end of the respective Financial Year, (iv) the Fixed Charge Coverage Ratio noted above shall be calculated prior to making any payments required by this Section 2.04(4), and (v) the Senior Debt to EBITDA Ratio and the Total Debt to EBITDA Ratio, in each case as noted above, shall be calculated prior to making any payment required by this Section 2.04(4) and on a *pro forma* basis following payment including any Debt required to make such payment.

(5) Subject to the repayment or prepayment obligations to the Senior Lenders pursuant to the Senior Credit Agreement, an amount equal to 100% of the Net Proceeds of any income tax recovery received by the Company in Financial Year 2010 in excess of \$2,600,000 shall be applied forthwith upon receipt by or on behalf of the Company or any Restricted Subsidiary in accordance with Section 2.06 hereof.

#### **Section 2.05 Optional Prepayments and Reductions of Commitments.**

(1) Subject to Section 2.05(2) the Borrower may, subject to the provisions of this Agreement, repay, in whole or in part (in a minimum amount of \$500,000 unless a lesser amount is owing under the Loan), without penalty or bonus, the Loan, upon five Business Days' notice by the Borrower to the Lender by a notice stating the proposed date and aggregate principal amount of the prepayment or reduction. In such case, the Borrower shall pay to the Lender in accordance with such notice the amount of such prepayment (together with accrued and unpaid interest thereon).

(2) Should any portion of the Loan be repaid (for any reason whatsoever (whether voluntary or involuntary), including acceleration of the Obligations) prior to the second anniversary of the Third Closing Date, the Borrower shall pay to the Lender such additional amounts so that the Lender shall have received twenty-four months of interest on that principal amount of the Loan that is being repaid based on an interest rate equal to the rate of interest applicable to the Loan on the date of prepayment. The requirement to pay such additional interest will not apply to payments of the Loan arising from a payment from the cash flow sweep made in accordance with Section 2.04(4).

#### **Section 2.06 Payments under this Agreement.**

(1) Unless otherwise expressly provided in this Agreement, the Borrower shall make any payment required to be made by it to the Lender by payment not later than 11:00 a.m. (Toronto time) on the date the payment is due without deduction for set-off or counterclaim.

(2) All amounts received by the Lender shall be applied as follows (i) first, in reduction of the Borrower's obligation to pay any unpaid interest and any Fees which are due and owing; (ii) second, in reduction of the Borrower's obligation to pay any claims or losses referred to in Section 11.01 and Section 8.02; (iii) third, in reduction of the Borrower's obligation to pay any amounts due and owing on account of any unpaid principal amount of the Loan; (iv) fourth, in reduction of any other obligation of the Company or any Restricted Subsidiary under this Agreement and the other

Credit Documents; and (vi) fifth, to the Borrower or such other Persons as may lawfully be entitled to or directed to receive the remainder.

## **Section 2.07 Guarantees and Security.**

(1) As general and continuing collateral security for the due payment of the Obligations owing to Lender under this Agreement and under the other Credit Documents on the Closing Date there was provided the following security:

- (i) a guarantee of all of the Obligations of the Borrower from the Company and each Restricted Subsidiary (other than the Borrower);
- (ii) a general security agreement in favour of the Lender from the Company and each Restricted Subsidiary, constituting a second-priority Lien (subject to Permitted Liens) on all property from time to time of the Company or such Restricted Subsidiary;
- (iii) a fixed and floating debenture constituting a second-ranking mortgage (subject to Permitted Liens) on all real property from time to time owned by the Company or any Restricted Subsidiary, together with title opinions as requested by the Lender in respect of such real property;
- (iv) a debenture delivery agreement in favour of the Lender in respect of each debenture referred to in (iii) above;
- (v) a limited recourse guarantee (which shall be limited to proceeding and realizing under the provisions of the securities pledge agreement of such Person made in favour of the Lender) from each Person that owns any Shares in the capital of the Company from time to time (each, a "Parent Entity"); and
- (vi) a securities pledge agreement in favour of the Lender from (i) the Company and each Restricted Subsidiary with respect to its Shares in each of its Material Subsidiaries, and (ii) each Parent Entity with respect to its Shares of the Company, in each case, constituting a second-priority Lien on all such Shares, together with certificates representing all such Shares duly registered in the name of the pledgor and stock transfer powers duly executed in blank.

Notwithstanding the foregoing, Australiaco and Royal Scot were not required to provide Security in accordance with the foregoing.

(2) On January 22, 2008 538626 B.C. Ltd. delivered a guarantee in favour of the Lender of the Obligations and on December 24, 2008 Australiaco delivered a guarantee in favour of the Lender of the Obligations.

(3) The Security shall comply with all Applicable Laws and shall be registered or filed from time to time in all Relevant Jurisdictions.



(4) The Company will from time to time at its expense duly authorize, execute and deliver, and cause to be duly authorized, executed and delivered, to the Lender such further instruments and documents and take such further action as the Lender may reasonably request for the purpose of obtaining or preserving the full benefits granted or intended to be granted to the Lender by the Security and of the rights and remedies therein granted to the Lender, including without limitation the filing of financing statements or other documents under any Applicable Law with respect to the Liens created thereby. Unless prohibited by Applicable Law, the Company and each Restricted Subsidiary authorizes the Lender to file any such financing statement or similar documents without the signature of the Company or such Restricted Subsidiary, or to execute such financing statement as attorney for the Company or such Restricted Subsidiary in the event that the Company or such Restricted Subsidiary fails to do so promptly upon request by the Lender. The Company acknowledges that the Security has been prepared on the basis of Applicable Law in effect on the date hereof, and that changes to Applicable Law may require the execution and delivery of different forms of documentation, and accordingly the Lender shall have the right to require that the Security be amended, supplemented or replaced (and the Company shall, and shall cause each Restricted Subsidiary to, duly authorize, execute and deliver, and cause each shareholder of such Person who has delivered any Security Documents to duly authorize, execute and deliver, to the Lender on request any such amendment, supplement or replacement with respect to any of the Security to which the Company, such Restricted Subsidiary or shareholder is a party): (i) to reflect any change in Applicable Law, whether arising as a result of statutory amendments, court decisions or otherwise; (ii) to facilitate the creation and registration of appropriate forms of security in all Relevant Jurisdictions; (iii) if any other material real property is subsequently acquired by the Company or any Restricted Subsidiary; or (iv) if the Company, any Restricted Subsidiary or any Parent Entity amalgamates with any other person or enters into any corporate reorganization, to confer upon the Lender Liens similar to the Liens created or intended to be created by the Security.

### ARTICLE 3 INTEREST, ETC.

#### Section 3.01 Interest.

- (a) (A) Unless otherwise specifically provided herein, the Loan shall bear interest at a rate of 15% per annum to the date of repayment in full on the unpaid amount of the Loan which shall be calculated and compounded monthly in arrears on the last day of each month.
- (b) For each month prior to July 31, 2012 should a Compliance Certificate confirm that the Senior Debt to EBITDA Ratio for the preceding twelve month period is equal to or less than 3.0:1.0 and the Fixed Charge Coverage Ratio for the preceding twelve month period is equal to or greater than 1.2:1.0, the Borrower shall be required to make cash payments of interest which interest shall be payable monthly in arrears on the last Business Day of the month of delivery of such Compliance Certificate. If a Compliance Certificate is not delivered by the Borrower in any given month, the Borrower shall be required to make cash payments of interest for that month. Accordingly, for each month prior to July 31, 2012 should a Compliance Certificate confirm that the Senior Debt to EBITDA Ratio for the preceding twelve month period is greater than 3.0:1.0 or the Fixed Charge Coverage Ratio for the preceding

twelve month period is less than 1.2:1.0, the Borrower shall not be required to make cash interest payments for that month but instead interest shall be capitalized. All interest that has been capitalized shall be added to the principal due and owing pursuant to the Loan and shall bear interest at the same rate, being 15%. Following July 31, 2012 and irrespective as to the Senior Debt to EBITDA Ratio and the Fixed Charge Coverage Ratio for the preceding twelve month period, all interest on the Loan shall thereafter be cash pay and shall be payable monthly in arrears on the last Business Day of each month.

- (c) Upon the occurrence of and continuance of an Event of Default, all interest applicable to the Loan shall be at a rate per annum equal to 18% per annum. If the Event of Default is cured or waived by the Lender, the interest rate shall thereafter be based on the rate applicable pursuant to Section 3.01.

### **Section 3.02 Overdue Principal and Interest, Defaults**

- (a) If all or part of the Loan shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue amount shall bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to 18% per annum, in each case from the date of such non-payment until paid in full.
- (b) If all or part of any interest in respect of the Loan shall not be paid when due (whether at its stated maturity, by acceleration or otherwise), such overdue interest shall bear interest (as well after as before judgment), payable on demand, at a rate per annum equal to 18% per annum, in each case from the date of such non-payment until paid in full.

### **Section 3.03 Interest on Other Amounts**

Unless otherwise specifically stated in this Article 2 or elsewhere in any Credit Document, any amount owed by the Borrower to the Lender under any of the Credit Documents that is not paid when due and payable, shall bear interest (as well after as before default and judgement), payable on demand at a rate per annum equal to 18%.

### **Section 3.04 Computations of Interest and Fees.**

(1) All computations of interest shall be made by the Lender taking into account the actual number of days occurring in the period for which such interest is payable on the basis of a year of 365 days or 366 days, as the case may be.

(2) All computations of Fees shall be made by the Lender on the basis of a year of 365 or 366 days, as the case may be, taking into account the actual number of days occurring in the period for which such fees are payable.

(3) For purposes of the Interest Act (Canada) whenever any interest or Fee under this Agreement is calculated using a rate based on a number of days less than a full year, such rate determined pursuant to such calculation, when expressed as an annual rate, is equivalent to (x) the applicable rate, (y) multiplied by the actual number of days in the calendar year in which the period

for which such interest or fee is payable (or compounded) ends, and (z) divided by the number of days comprising such calculation basis. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. The rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(4) No provision of this Agreement shall have the effect of requiring the Borrower to pay interest (as such term is defined in section 347 of the Criminal Code (Canada)) at a rate in excess of 60% per annum, taking into account all other amounts which must be taken into account for the purpose thereof and, to such extent, the Borrower's obligation to pay interest hereunder shall be so limited.

(5) Unless otherwise indicated, interest on any outstanding principal amount shall be calculated daily and shall be payable monthly in arrears on the last day of each and every month. If the last day of a month is not a Business Day, the interest payment due on such day shall be made on the next Business Day, and interest shall continue to accrue on the said principal amount and shall also be paid on such next Business Day. Interest shall accrue from and including the day upon which the Loan is made, and ending on but excluding the day on which the Loan is repaid in full.

### **Section 3.05 Place of Advances, Repayments**

(1) All payments received by the Lender on a Business Day before 2:00 p.m. Toronto time shall be treated as having been received by the Lender on that day. Payments made after such time on a Business Day shall be treated as having been received by the Lender on the next Business Day.

(2) Whenever any payment shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day.

(3) The Borrower hereby irrevocably authorizes the Lender (or its Affiliates) to debit any account maintained by the Borrower with the Lender (or its Affiliates) from time to time in order to pay any amount of principal, interest, fees, expenses or other amounts payable by the Borrower pursuant to this Agreement, if such amount is not paid in full by the Borrower within thirty (30) days after receipt of a written request from the Lender for payment of such amount.

### **Section 3.06 Evidence of Obligations (Noteless Advances)**

(1) The Lender shall open and maintain, in accordance with its usual practice, accounts evidencing the Obligations; and the information entered in such accounts shall constitute conclusive evidence of the Obligations absent manifest error. The Lender may, but shall not be obliged to, request the Borrower to execute and deliver from time to time such promissory notes as may be required as additional evidence of the Obligations, in form and substance satisfactory to the Lender.

## ARTICLE 4 CONDITIONS TO EFFECTIVENESS

### Section 4.01 Conditions Precedent to the Advance of the Loan.

The obligation of the Lender to make the Loan on the Closing Date was subject to the conditions precedent that the Lender shall have received the following, in a form and substance satisfactory to it:

(1) a certified copy of (i) the charter documents and by-laws of the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity; (ii) the resolutions of the board of directors or of the shareholders, as the case may be, of the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity approving the borrowing and other matters contemplated by this Agreement and approving the entering into of all Credit Documents to which it is a party and the completion of all transactions contemplated thereunder; and (iii) all other instruments evidencing necessary corporate action of the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity and of any required Authorization with respect to such matters;

(2) a certificate of the secretary or an assistant secretary of the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity certifying the names and true signatures of its officers authorized to sign this Agreement and the other Credit Documents to which it is a party;

(3) a certificate of status, compliance, good standing or like certificate with respect to the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity issued by the appropriate government official in the jurisdiction of its incorporation;

(4) the Credit Documents;

(5) evidence of registration in the Relevant Jurisdictions of the Security or notice thereof in favour of the Lender, created by the Security in order to preserve or protect the Liens created thereby or other arrangements for effecting such registrations acceptable to the Lender;

(6) favourable opinions of counsel to the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity in (i) the jurisdiction of organization of such entity; and (ii) each other relevant jurisdiction to confirm the enforceability, validity and perfection of the Liens created by the Security Documents;

(7) all fees and expenses (including the legal fees and disbursements of McCarthy Tétrault LLP and local counsel engaged by McCarthy Tétrault LLP on behalf of the Lender) and payable under the Credit Documents shall have been paid in full;

(8) definitive documentation relating to the Senior Debt;

(9) a Compliance Certificate;

(10) a certified copy of the fully-executed VTB Note, the Share Purchase Agreement and all security granted in connection therewith;

(11) certificate(s) of insurance evidencing that the Company and each Restricted Subsidiary (other than Royal Scot) has named the Lender as second loss payee and additional insured in relation to all insurance over, or in respect of, their respective Assets, together with standard mortgage endorsement clauses, to be provided in accordance with Section 6.01(d);

(12) such other certificates and documentation as the Lender may reasonably request;

(13) confirmation that all of the representations and warranties of the Company and the Restricted Subsidiaries herein and in the other Credit Documents are true and correct on and as of such date as though made on and as of such date (except as disclosed to and accepted by the Lender prior to such date);

(14) confirmation that no event or condition shall have occurred and be continuing, or giving effect to the Loan, which constitutes a Default or an Event of Default;

(15) confirmation that there has not occurred after December 31, 2006 any event which has or could reasonably be expected to have a Material Adverse Effect; and

(16) confirmation that the making of the Loan hereunder will not violate any applicable Law then in effect.

#### **Section 4.02 Conditions Precedent to the Effectiveness of this Agreement.**

This Agreement shall become effective upon satisfaction of the following conditions precedent, each to the satisfaction of the Lender:

(1) a certified copy of (i) the charter documents and by-laws of the Company and the Borrower; (ii) the resolutions of the board of directors or of the shareholders, as the case may be, of the Company and the Borrower; and (iii) all other instruments evidencing necessary corporate action of the Company and the Borrower and of any required Authorization with respect to such matters;

(2) a certificate of the secretary or an assistant secretary of the Company and the Borrower certifying the names and true signatures of its officers authorized to sign this Agreement and the other Credit Documents to which it is a party;

(3) a certificate of status, compliance, good standing or like certificate with respect to the Company, each Restricted Subsidiary (other than Australiaco and Royal Scot) and each Parent Entity issued by the appropriate government official in the jurisdiction of its incorporation;

(4) execution and delivery of the VTB Subordination Agreement;

(5) execution and delivery of the BMOCC Subordination Agreement;

(6) execution and delivery of the Securityholder Agreement, the amended and restated warrant agreement and the Warrant;



- (7) execution and deliver of the Kraus Subordination Agreement;
- (8) favourable opinions of counsel to the Company and the Borrower;
- (9) execution and delivery of an acknowledgement and confirmation as to guarantee and security by the Company, the Borrower and each Restricted Subsidiary;
- (10) all fees and expenses (including the legal fees and disbursements of McCarthy Tétrault LLP and local counsel engaged by McCarthy Tétrault LLP on behalf of the Lender) and payable under the Credit Documents shall have been paid in full;
- (11) receipt of a certified copy of the Senior Credit Agreement and all amendments executed in connection therewith to the Third Closing Date and all material documentation executed in connection with the amending agreement executed on the Third Closing Date;
- (12) receipt of a certified copy of the amending agreement to the VTB Note and the VTB Security;
- (13) receipt of a certified copy of the promissory note made by the Borrower (or a predecessor of the Borrower) in favour of Anneleen Eckhardt Holdings Limited;
- (14) delivery of a Compliance Certificate;
- (15) receipt of a certificate of insurance noting the Lender as second loss payee and additional insured;
- (16) receipt by the Lender of a charge against all of the legal and beneficial title owned by the Credit Parties with respect to the property municipally known as 65 Northfield Drive, Waterloo, Ontario along with the confirmation of the application of title insurance previously obtained in favour of the Lender and a legal opinion of counsel to the Credit Parties in connection the direction, acknowledgement and ratification made in favour of the Lender, in each case in form and substance satisfactory to the Lender;
- (17) confirmation that all of the representations and warranties of the Company and the Restricted Subsidiaries herein and in the other Credit Documents are true and correct on and as of such date as though made on and as of such date (except as disclosed to and accepted by the Lender prior to such date);
- (18) confirmation that no event or condition shall have occurred and be continuing, or giving effect to the Loan, which constitutes a Default or an Event of Default;
- (19) confirmation that there has not occurred after December 31, 2009 any event which has or could reasonably be expected to have a Material Adverse Effect; and
- (20) such other certificates and documentation as the Lender may reasonably request.

465

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

### Section 5.01 Representations and Warranties.

Each of the Company and the Borrower represent and warrant to the Lender, acknowledging and confirming that the Lender is relying thereon without independent inquiry in entering into this Agreement that:

- (a) **Existence and Standing.** The Company and each of its Restricted Subsidiaries is a corporation, partnership or other entity, as the case may be, incorporated or organised and subsisting under the laws of its jurisdiction of incorporation or organization, specified on Schedule 5.01(a) (or as otherwise specified in accordance with the terms hereof in respect of any Subsidiary of the Company acquired or formed after the date hereof) and has all requisite corporate or other power and authority to own, hold under license or lease its property, undertaking and Assets and to carry on (i) its business as now conducted (and as now proposed to be conducted); and (ii) the transactions contemplated by this Agreement and each other Credit Document to which it is a party.
- (b) **Corporate Power.** The Company and each of its Restricted Subsidiaries has all requisite corporate, partnership or other power and authority to enter into and perform its obligations under this Agreement and each other Credit Document to which it is a party, and to do all acts and things and execute and deliver all other documents and instruments as are required hereunder or thereunder to be done, observed or performed by it in accordance with the terms hereof and thereof.
- (c) **Conflict with Other Instruments.** The execution and delivery by the Company and each of its Restricted Subsidiaries and the performance by it of its obligations under, and compliance with the terms, conditions and provisions of, this Agreement and each other Credit Document to which it is a party will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its articles, by-laws, partnership agreement or other organizational documents, as the case may be; (ii) any Applicable Law; (iii) any Material Contract; or (iv) any material judgment, injunction, determination or award which is binding on it in each such case except to the extent that such breach would not reasonably be expected to result in a Material Adverse Effect.
- (d) **Corporate Action, Governmental Approvals, etc.** The execution and delivery by the Company and each of its Restricted Subsidiaries of this Agreement and each of the Credit Documents to which it is a party, and the performance by it of its obligations thereunder have been duly authorized by all necessary corporate, partnership or other action including, without limitation, the obtaining of all necessary shareholder, partnership or other relevant consents. No authorization, consent, approval, registration, qualification, designation, declaration or filing with any Governmental Entity or other Person, is or was necessary in connection with the execution, delivery and performance of the Company's or any of its Restricted

Subsidiaries' obligations under this Agreement and the other Credit Documents to which it is a party, except such as are in full force and effect, unamended at the date hereof.

- (e) **Due Execution; Validity and Enforceability; Defaults.** This Agreement and each other Credit Document to which the Company or any of its Restricted Subsidiaries is a party has been duly executed and delivered, as the case may be, by the Company and each of its Restricted Subsidiaries which is a party thereto and constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by the availability of equitable remedies and the effect of bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally), is (or will be immediately upon the execution thereof by such Person) in full force and effect unamended, and the Company and each of its Restricted Subsidiaries has performed and complied with all the terms, provisions, agreements and conditions set forth herein and therein and required to be performed or complied with by the Company or such Restricted Subsidiary, as the case may be.
- (f) **Authorizations and Permits.** The Company and each of its Restricted Subsidiaries possess all Authorizations and Material Permits necessary for the conduct of the Business. As at the Third Closing Date, the Authorizations and Material Permits described in Schedule 5.01(f) are the only Authorizations and Material Permits necessary for the conduct of the Business.
- (g) **Litigation and Other Proceedings.** There is no litigation, arbitration, claim, dispute (whether labour, industrial or otherwise), proceeding or inquiry pending or, to its knowledge, threatened, and, to its knowledge, no governmental investigation pending or threatened, against or affecting the Company or any of its Restricted Subsidiaries which could reasonably be expected to result in a Material Adverse Effect.
- (h) **Ownership of Assets.** The Assets of the Company and its Restricted Subsidiaries are free and clear of all Liens other than Permitted Liens.
- (i) **Subject Properties.**
  - (A) Each of the Company and each Restricted Subsidiary, as the case may be, (A) is the registered and beneficial owner of an undivided fee simple interest in the Owned Properties, and (B) has good and valid title to all of its Assets reflected as assets in their books and records, in each case free and clear of all Liens other than Permitted Liens. Neither the Company nor any Restricted Subsidiary (x) owns any real property other than the Owned Properties; (y) is bound by any agreement to own, lease, sublease or license any real property providing for the payments of annual basic rent in excess of \$250,000 except for the Leases disclosed on Schedule 5.01(i); or (z) has leased any of its Owned Properties except pursuant to a Material Contract;



- (B) Save as disclosed in Schedule 5.01(i), or in any Landlord Waiver delivered in connection herewith (A) each Lease is in good standing and the Company and each Restricted Subsidiary is entitled to the benefit of all such leases or subleases to which it is a party; (B) all amounts of rents and other amounts presently owing under the Leases have been paid by each of the Company and each Restricted Subsidiary; (C) each of the Company and each Restricted Subsidiary has complied in all material respects with all of the obligations under the Leases to which it is a party, and no Borrower is in default or breach or has received a notice of default or breach of its obligations under any Lease and there exists no event of default or event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under such Leases; and (D) each of the Leased Properties is adequate and suitable for the purposes for which it is presently being used and the Company and each Restricted Subsidiary, as the case may be, has adequate rights of ingress and egress into each of the Leased Properties that the Company and each Restricted Subsidiary leases for the operation of the Business;
- (C) The Subject Properties constitute all real property necessary to operate and conduct the Business excluding any property interest which, taken alone, is not material. The operations of the Business in or from the Subject Properties are not subject to any restrictions or limitations, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect;
- (D) No part of any of the Subject Properties or the buildings and fixtures located on the Subject Properties has been taken or expropriated by any Governmental Authority, no written notice or proceeding in respect of an expropriation has been given or commenced nor is any of the Company or any Restricted Subsidiary aware of any intent or proposal to give any such notice or commence any proceedings. Neither the Company nor any Restricted Subsidiary knows of any intention by any Governmental Authority to alter the applicable zoning by-law or official plan or any other law or municipal ordinance so as to adversely affect, or potentially adversely effect, the present use of the Subject Properties;
- (E) Except for Permitted Liens, to the knowledge of the Company and each Restricted Subsidiary, the buildings and fixtures located at each of the Owned Properties are located entirely within such Owned Property and are in conformity with set-back and coverage requirements of all applicable Governmental Entities and there are no material encroachments upon any of the Owned Properties;

- (F) To the best of the knowledge of the Company and each Restricted Subsidiary, each of the Subject Properties has been used, and the Company and each Restricted Subsidiary are in compliance with all Applicable Laws in all material respects;
- (G) No notice advising of any material defects in the construction or state of repair of any of the Subject Properties or any directive requiring that any material alterations, repairs, improvements or other work to be done with respect to any of the Subject Properties or relating to any material non-compliance with any building permit, building restriction, by-law requirement, regulation or ordinance, has been issued or, if issued, will remain outstanding as at the date of this Agreement. All material amounts for labour and materials relating to the construction, repair or improvement of the Subject Properties or any buildings, improvements or structures located thereon have been fully paid for or will be fully paid for in accordance with the applicable construction contract save for any required holdback under the *Construction Lien Act* (Ontario); and
- (H) Except for Permitted Liens, to the best of the knowledge of the Company and each Restricted Subsidiary, (A) there is no violation by the Company or any Restricted Subsidiary of any health, safety, zoning, subdivision or building statute, ordinance or restriction, or any restrictive covenant, affecting any of the Subject Properties; (B) all water, sewer, gas, electric, telephone, drainage and other utility equipment facilities and services now used for the use and operation of the Subject Properties are adequate to service the Subject Properties; (C) all of the buildings, fixtures, improvements and structures constituting part of the Subject Properties are free from structural and inherent defects which interfere with or impair the use and occupancy of the Subject Properties; (D) the roofs, walls, floors and other structural elements of the Subject Properties are in good condition and repair, usual wear and tear excepted; (E) no present use of any of the Subject Properties constitutes a non-conforming use except for legal non-conforming uses; and (F) the location and existence of each building, fixture, improvement and structure forming part of the Owned Properties do not infringe the provisions of any servitude, easement, right of way, charge or encumbrance registered against or otherwise charging or affecting any of the Subject Properties, in each case, in all material respects.
- (j) **Accounts Receivable.** All Accounts Receivable of the Company and each Restricted Subsidiary are bona fide and good and collectible at their face amounts in the ordinary course of business (subject to no defence, counterclaim or set-off) except to the extent of any reserves provided for doubtful accounts in the ordinary course of business and reflected in the financial statements or the books and records

469

of the Company or the Restricted Subsidiaries which have been disclosed to the Lender.

- (k) **No Default Under this Agreement.** No Default or Event of Default has occurred and is continuing.
- (l) **Compliance with Other Legal Obligations.** Neither the Company nor any Restricted Subsidiary is in violation of any contractual obligation howsoever arising (whether under any agreement, indenture, mortgage, franchise, license or otherwise), judgment or decree, relating in any way to it, to the present or future operation of its business or to its present or Assets the breach or violation of which could reasonably be expected to result in a Material Adverse Effect.
- (m) **Residency.** Neither the Company nor any Restricted Subsidiary (other than the U.S. Borrowers (as defined in the Senior Credit Agreement), McMahon Holdings Inc., Royal Scot and Australiaco) is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- (n) **Taxes.** The Company and its Restricted Subsidiaries have filed or caused to be filed all tax returns which, to its knowledge, are required to have been filed, and have paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Entity (other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided in its books); and no tax liens have been filed and, to the knowledge of the Company and each Restricted Subsidiary, no claims are being asserted with respect to any such taxes, fees or other charges.
- (o) **Material Contracts.** As of the Third Closing Date, neither the Company nor any Restricted Subsidiary is a party or otherwise subject or bound or affected by any Material Contract, except as set out in Schedule 5.01(o). Except as set forth in Schedule 5.01(o) or as otherwise notified to the Lender in accordance with Section 6.01(b), all Material Contracts are in full force and effect, unamended, and neither the Company nor any Restricted Subsidiary, or to its knowledge, any other party to any such agreement is in default with respect thereto which could reasonably be expected to result in a Material Adverse Effect. To the best of the knowledge of the Company and its Restricted Subsidiaries, no event has occurred which with the giving of notice or lapse of time, or both, would constitute an event of default under a Material Contract.
- (p) **Places of Business.** As of the Third Closing Date, Schedule 5.01(p) sets out the information described in the definition of Relevant Jurisdiction with respect to the Company and each Restricted Subsidiary.
- (q) **Financial Statements.** The financial statements of the Company which have been provided to the Lender are accurate and complete in all material respects, and fairly present the consolidated financial condition and business operations of the Company,

as at the date thereof and are prepared in a form and manner consistent with existing financial reporting practices of the Company in accordance with GAAP.

- (r) **Compliance with Laws.** The Company and its Subsidiaries, and the operation of their respective business and Assets, are in compliance in all respects with all applicable Laws the failure to comply with which could reasonably be expected to result in a Material Adverse Effect. The Company's and its Subsidiaries' business and other assets (i) are in compliance in all respects with all Environmental Laws the failure to comply with which could reasonably be expected to result in a Material Adverse Effect; and (ii) possess and are operated in compliance with all Authorizations which are required under all applicable Environmental Laws for the operation of such business and asset the absence of which could reasonably be expected to result in a Material Adverse Effect. Except as disclosed in certain environmental audits dated February 28, 2007 prepared by Trow Associates Inc., copies of which have been provided to the Lender, to the best of the knowledge of the Company and each of its Subsidiaries, the Company's and its Subsidiaries' business and Assets are not subject to any past or present fact, condition or circumstance that could result in any liability under any Environmental Laws.
- (s) **Pension Plan.** Schedule 5.01(s) sets forth a complete list and description of all Pension Plans established by the Company or any Restricted Subsidiary as at the Third Closing Date. All Pension Plans established by the Company or any Restricted Subsidiary for any of its employees are duly registered where required by, and in good standing under, Applicable Law, and all required contributions under such plans have been made and the respective funds are funded in accordance with the rules of the applicable Pension Plan and Applicable Law and no material past service or experienced deficiency funding liabilities in excess of \$1,500,000 in the aggregate exists thereunder.
- (t) **Insurance.** The Company and each Restricted Subsidiary maintain insurance (including business interruption insurance, property insurance and general liability insurance) with responsible insurance carriers (or as otherwise permitted pursuant to Section 6.01(d)) and in such amounts and covering such risks as are usually carried by companies engaged in similar businesses and owning similar properties.
- (u) **Material Adverse Effect.** There has occurred no event which has resulted in or which could reasonably be expected to result in a Material Adverse Effect.
- (v) **Owned Intellectual Property.** Schedule 5.01(v) sets forth a complete list and a description at the Third Closing Date of all Intellectual Property owned by the Company or any Restricted Subsidiary used in the business of the Company or any Restricted Subsidiary. The Company and each Restricted Subsidiary own the Intellectual Property set forth on Schedule 5.01(v) free and clear of any Liens (other than Permitted Liens). Neither the Company nor any Restricted Subsidiary has (directly or indirectly) licensed, transferred, assigned or otherwise agreed to or consented to the use of any of the Intellectual Property set forth on Schedule 5.01(v) by any Person other than the Company or a Restricted Subsidiary. References to

Schedule 5.01(v) shall include Schedule 5.01(v) as such Schedule is updated in accordance with the terms of this Agreement.

- (w) **Licensed Intellectual Property.** Schedule 5.01(w) sets forth a complete list and description at the Third Closing Date of the Intellectual Property which is material to the operation of the business of the Company or any Restricted Subsidiary of which the Company or any Restricted Subsidiary is not the sole beneficial and registered owner. Each of the Company and its Restricted Subsidiaries is using or holding such Intellectual Property with the consent of or a licence from the owner of such Intellectual Property, all of which such consents or licences (including the licences specified on Schedule 5.01(w)) are in full force and effect and no default exists on the part of the Company or any Restricted Subsidiary or, to the knowledge of the Company or any Restricted Subsidiary, on the part of any of the parties thereto. References to Schedule 5.01(w) shall include Schedule 5.01(w) as such Schedule is updated in accordance with the terms of this Agreement.
- (x) **Sufficiency of Intellectual Property.** The Owned Intellectual Property and the Licensed Intellectual Property is the only Intellectual Property material to the business of the Company and its Restricted Subsidiaries.
- (y) **Infringements of Intellectual Property.** There are no Claims by the Company or any Restricted Subsidiary relating to breaches, violations, infringements or interferences with any of the Owned Intellectual Property or Licensed Intellectual Property by any other Person which could reasonably be expected to result in a Material Adverse Effect and neither the Company nor any Restricted Subsidiary has any knowledge of any facts upon which such a Claim could be based. No other Person is using any of the Owned Intellectual Property or Licensed Intellectual Property so as to breach, violate, infringe or interfere, in each case in a manner that (i) could reasonably be expected to result in a Material Adverse Effect or (ii) in respect of which the Company or any Restricted Subsidiary has knowledge and neither the Company nor any Restricted Subsidiary has taken such steps as a prudent owner or licensee thereof would take seeking the termination of such breach, violation, infringement or interference. There are no Claims in progress or pending or threatened against the Company or any Restricted Subsidiary relating to the Owned Intellectual Property or the Licensed Intellectual Property and there is no valid basis for any such Claim.
- (z) **Subsidiaries.** Schedule 5.01(z) sets forth a complete list and a description of the ownership interest of the Company (directly or indirectly) in any other Person as at the Third Closing Date. Except as set forth on Schedule 5.01(z), as of the Third Closing Date, (i) the Company is the beneficial owner of all of the issued and outstanding Shares of each such Person; (ii) no Person other than the Company has any right or option to purchase or otherwise acquire any of the issued and outstanding Shares of any such Person; and (iii) the Company does not own or hold any Shares of, or any other interests in, directly or indirectly, any other Person.



- (aa) **Completeness of Disclosure.** All written information and data concerning the Company and its Subsidiaries that have been prepared by it or any of its representatives or advisors and that have been made available to the Lender are and, at the time such information and data were made available, were true and correct in all material respects and do not, and, at the time such information and data were made available, did not, contain any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements contained in such information and data not misleading in light of the circumstances under which such statements were made.
- (bb) **U.S. Employee Benefit Plans.** Each U.S. Restricted Subsidiary and each of their respective ERISA Affiliates is in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any U.S. Restricted Subsidiary, any of its Subsidiaries or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any U.S. Restricted Subsidiary, any of its Subsidiaries or any of their respective ERISA Affiliates. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by any U.S. Restricted Subsidiary, any of its Subsidiaries or any of their ERISA Affiliates, (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of U.S. Restricted Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA); when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero. Each U.S. Restricted Subsidiary and each of their ERISA Affiliates has complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and is not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.
- (cc) **Governmental Regulation.** Neither the Company nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of

473

1940 or under any other federal or state statute or regulation which may limit its ability to incur Debt or which may otherwise render all or any portion of the obligations of the Borrower under this Agreement and the other Credit Documents unenforceable. Neither the Company nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

- (dd) **Margin Stock.** Neither the Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loan made to the Borrower will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of Board of Governors of the Federal Reserve Board of the United States.
- (ee) **Canadian Benefit Plans.** The Company and each Restricted Subsidiary has complied with and performed in all material respects all of its obligations under and in respect of the Canadian Benefit Plans under the terms thereof, any funding agreements and all Applicable Laws (including any fiduciary, funding, investment and administration obligations). All employer and employee payments, contributions or premiums to be remitted, paid to or in respect of each Canadian Benefit Plan have been paid in a timely fashion in accordance with the terms thereof, any funding agreement and all Applicable Laws. There have been no improper withdrawals or applications of the assets of the Canadian Benefit Plans. There are no outstanding disputes (except for routine claims for payment of benefits) concerning the assets of the Canadian Benefit Plans.
- (ff) **VTB Subordinate Debt.** There are no agreements (whether written or otherwise) relating to the VTB Subordinate Debt that have not been disclosed in writing to the Lender.
- (gg) **Kraus JV.** Kraus JV owns no assets and carries on no business other than its lease of the premises located at 530 W North Frontage Road, Bolingbrook, Illinois, 60440.

## **Section 5.02 Survival of Representations and Warranties.**

The representations and warranties herein set forth or contained in any certificates or documents delivered to the Lender pursuant hereto shall not merge in or be prejudiced by and shall survive the advances of the Loan hereunder and shall continue in full force and effect (as of the date when made or deemed to be made) so long as any amounts are owing by the Borrower to the Lender hereunder.

## ARTICLE 6 COVENANTS OF THE COMPANY

### Section 6.01 Affirmative Covenants.

So long as any amount owing hereunder remains unpaid, and unless consent is given in accordance with Section 13.01 hereof, the Company shall:

(a) **Financial Reporting.** Deliver to the Lender:

- (A) as soon as practicable and in any event within 120 days after the end of each Financial Year of the Company, (i) the consolidated annual audited financial statements of the Company for such period consisting of at least a balance sheet, statement of earnings, retained earnings and a statement of cash flows for such Financial Year prepared in accordance with GAAP, which financial statements shall be audited by an internationally recognized accounting firm; and (ii) unaudited annual financial statements of the Company prepared on an Adjusted Consolidated Basis for such period consisting of at least a balance sheet, statement of earnings, retained earnings and a statement of cash flows for such Financial Year prepared in accordance with GAAP;
- (B) within 20 days following the end of each month (or, if such day is not a Business Day, then on the next Business Day thereafter) (other than in the case of calendar year end financial statements, which are due on January 30, of each year):
  - (I) monthly, unaudited, consolidated financial statements of the Company, in each case for such month and for the year to date and consisting of at least a balance sheet, statement of earnings, retained earnings and a statement of cash flows prepared in accordance with GAAP with comparative figures for the corresponding period in the preceding financial period. It is acknowledged that results for each December 31 month-end may not include all final year-end adjustments applicable to the annual period then ending;
  - (II) management's discussion and analysis of the variances between the Annual Business Plan and the actual results from the preceding month;
  - (III) a 12-week rolling consolidated cash flow forecast for the Company and the Restricted Subsidiaries, other than in the case of Australiaco, in form and content satisfactory to the Lender (the "Cash Flow Forecast"); and

475

- (IV) a 12-week rolling cash flow forecast for Australiaco, in form and content satisfactory to the Lender (the "**Australiaco Cash Flow Forecast**"); and
- (C) as soon as practicable and in any event within 120 days after the end of each Financial Year of the Borrower, unaudited management prepared annual financial statements of the Borrower for such period consisting of at least a balance sheet, statement of earnings, retained earnings and a statement of cash flows for such Financial Year prepared in accordance with GAAP;
- (D) in addition to any of the reporting required pursuant to this Section 6.01(a), any reports prepared and provided by the Company to the Senior Lenders;
- (E) together with the financial statements delivered pursuant to Section 6.01(a)(A) and Section 6.01(a)(B), a Compliance Certificate;
- (F) as soon as practicable and in any event within 30 days following the end of each Financial Year, an Annual Business Plan for the following Financial Year.
- (G) provided that such reporting is still required by or being provided to the Senior Lenders, by 5:00 p.m. (Toronto time) on Friday of every week:
  - (I) actual cash flow results for the preceding week; and
  - (II) management's discussion and analysis of the variances between the Cash Flow Forecast, the Australiaco Cash Flow Forecast and the actual results for the preceding week;
- (H) forthwith upon receipt thereof, a copy of all notices received by the Company or any Restricted Subsidiary in which any creditor, landlord or other third party delivers a notice of defect, default, demand, writ of execution, suit, action, garnishment, proceeding or litigation or threatened suit, action, garnishment, proceeding or litigation, acceleration or enforcement in respect of any obligation of the Company or any Restricted Subsidiary exceeding \$50,000;
- (I) no later than the last Business Day of the end of each calendar month, details of any tax receipts received by the Company or any of its Subsidiaries during such calendar month and a summary identifying the aggregate amount of such receipts for the then current Financial Year;
- (J) together with the financial statements delivered pursuant to Section 6.01(a)(A), a Consolidated Free Cash Flow Certificate;

(K) in conjunction with the Company delivering the results of the month ended October 31, 2010, the Company shall prepare and present a calculation of the covenants in Sections 6.04(1)(a), 6.04(1)(b), 6.04(1)(c), and 6.04(1)(d) and a forecast of such covenants as of December 31, 2010; and

(L) no later than November 30, 2010, the Company shall deliver to the Lender the 2011 Business Plan.

- (b) **Additional Reporting Requirements.** Deliver to the Lender (i) forthwith upon becoming aware of any Default or Event of Default, a statement of a Senior Officer of the Company or any other officer acceptable to the Lender setting forth the details of the Default or Event of Default and the action which the Company proposes to take or has taken; (ii) as soon as possible, but in any event no later than 10 days after becoming aware of each occurrence, full particulars of any proceeding initiated against the Company or any of its Subsidiaries alleging violation of any Environmental Laws or responsibility for any domestic or foreign clean up or remediation of property contaminated by Hazardous Substances or requiring any other remedial or corrective action under any Environmental Laws, and of any notice of any material condition with respect to any of its property which might reasonably be expected to result in any violation of any Environmental Laws, and of any action taken by the Company or its applicable Subsidiary as a result of any Environmental Laws, which has had, or which would reasonably be expected to have a Material Adverse Effect; (iii) promptly upon acquisition thereof, particulars of each Subsidiary acquired by the Company; (iv) together with each Compliance Certificate to be delivered pursuant to Section 6.01(a)(E), written notice of any previously undisclosed: (A) Relevant Jurisdictions, (B) Subsidiaries of the Company, (C) Material Permits which become necessary for the conduct of the Business by the Company or any Restricted Subsidiary or any amendment or termination of any previously disclosed Material Permit, (D) Pension Plans of the Company or any of its Restricted Subsidiaries, and (E) any Lease or acquisition of real or immovable property by the Company or any Restricted Subsidiary or material amendment to or termination of any previously disclosed Lease or any amendment to or termination of any leases that, in the reasonable opinion of the Company, may be, in the aggregate, material to the business or operations of the Company or any Restricted Subsidiary; (v) upon becoming aware of same, notice in writing of any previously undisclosed actions, suits, arbitrations, proceedings or investigations pending, taken or threatened before or by any Governmental Authority or other Person against the Company or any of its Subsidiaries which, in each case, if determined adversely to the interests of any of them would have a Material Adverse Effect; (vi) from time to time upon the request of the Lender, evidence of maintenance of all insurance required to be maintained by Section 6.01(d), including such copies as the Lender may reasonably request of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of premium payments; (vii) within 10 Business Days after the renewal of all insurance required to be maintained by Section 6.01(d), copies of policies, certificates of insurance, riders and endorsements relating to such insurance and proof of payments; (viii) notice in writing of any amendments to, termination of



or default under any previously disclosed Material Contracts or Material Permits or of any new Material Contracts or Material Permits to be entered into by the Company or any Restricted Subsidiary, in each case, 30 Business Days prior to the effective date thereof; (ix) as soon as reasonably practicable, notice in writing of any event, circumstance or condition that has had a Material Adverse Effect or which could reasonably be expected to have a Material Adverse Effect; (x) promptly after the occurrence thereof, notice in writing that the Aggregate Mark-to-Market Exposure of all Eligible Hedging Agreements and any other interest rate hedges or foreign exchange hedges entered into by the Company or any Restricted Subsidiary results at any time in a negative value of greater than \$2,000,000 (or the equivalent thereof in any other currency); (xi) such other information respecting the condition, operations, financial or otherwise, of the business of the Company or any of its Subsidiaries as the Lender may from time to time reasonably request.

- (c) **Maintenance of Existence and Conduct of Business.** Preserve and keep in full force and effect and cause each Restricted Subsidiary to preserve and keep in full force and effect its corporate existence. Engage and cause each Restricted Subsidiary to engage in the Business. Carry on and conduct its business and cause each of its Restricted Subsidiaries to carry on and conduct its business in a proper, efficient and businesslike manner, in accordance with good business practice and take all reasonable action to obtain and maintain in full force and effect all rights, privileges, franchises and Permits necessary or desirable in the conduct of its business. Comply and cause each of its Restricted Subsidiaries to comply with all Applicable Law except to the extent that the failure to comply therewith would not, in the aggregate, have, or have a reasonable possibility of having, a Material Adverse Effect.
- (d) **Maintenance of Insurance.** Maintain or cause to be maintained, in respect of the Company and each Restricted Subsidiary insurance at all times with reasonable insurance carriers in such amounts and covering such risks as are usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which such Persons operate (including, without limitation, business interruption insurance, risk property insurance and general liability insurance), such policies to show the Lender, for and on behalf of the Lender, as loss payee thereof under a mortgage clause in form approved by the Insurance Bureau of Canada and promptly furnish or cause to be furnished evidence thereof to the Lender.
- (e) **Access to Information.** At the request of the Lender, provide to the Lender such information in respect of the Company and each of its Subsidiaries as may be reasonably requested by the Lender.
- (f) **Payment Obligations.** Pay or cause to be paid and cause each of its Subsidiaries to pay or cause to be paid, on or before the date for payment thereof all (x) taxes, assessments and governmental charges or levies imposed upon the Company or any of its Subsidiaries or upon its or their Assets, the non-filing or non-payment of which could reasonably be expected to have a Material Adverse Effect; and (y) claims which, if unpaid, might by Law become a Lien (other than a Permitted Lien) upon

any of their Assets which could reasonably be expected to have a Material Adverse Effect, except any such tax, assessment, governmental charge, levy or claim which is being contested in good faith and by proper proceedings and as to which reserves in accordance with GAAP have been established, or which is a Permitted Lien.

- (g) **Maintenance of Property.** Maintain and preserve, and cause each of its Restricted Subsidiaries to maintain and preserve, all of its and their respective properties used or useful in its business in all respects in good working order and condition (reasonable wear and tear excepted) and in compliance with Environmental Laws except to the extent that any failure to so maintain, preserve or comply could not reasonably be expected to result in a Material Adverse Effect. From time to time, make, and cause each of its Subsidiaries to make, all necessary and proper repairs, renewals, replacements, additions and improvements to the Subject Properties, so that the Business may be properly and advantageously conducted at all times.
- (h) **Environmental Audits.** Promptly (i) if the Lender has a good faith concern that there is non-compliance by the Company or any of its Subsidiaries with Environmental Laws which could reasonably be expected to have a Material Adverse Effect, conduct such environmental audits (by an environmental auditor or auditors approved by the Lender) concerning such alleged non-compliance as the Lender may reasonably request and permit the Lender to discuss such audits with such auditors; and (ii) remedy any non-compliance with Environmental Laws revealed by such audit, which, if not remedied, could reasonably be expected to have a Material Adverse Effect. Each such audit shall be at the Borrower's expense.
- (i) **Inspection of Property; Books and Records; Discussions.** Keep and cause each of its Subsidiaries to keep books and records of account in which full, true and correct entries in accordance with GAAP and all Applicable Law shall be made of all its dealings and transactions and permit representatives of the Lender to visit and inspect any of its property and to examine any of such books and records at any reasonable time and as often as may reasonably be requested, and to discuss its business, property, condition (financial or otherwise) and prospects with its senior officers and (in the presence of such of its representatives, if any, as it may designate) with its independent auditors.
- (j) [INTENTIONALLY DELETED]
- (k) **Granting of Security.** Deliver, and cause each Person that becomes a wholly-owned Subsidiary of the Company after the Third Closing Date to deliver, to the Lender, in the case of a Person that becomes such a Subsidiary, not later than 30 days after such Person becomes such a Subsidiary, security of the nature contemplated by Section 2.07, with respect to such a Subsidiary or other Subsidiary, together with related corporate documentation, revised schedules to this Agreement with such changes as are required to include the information relating to such Subsidiary, and legal opinions in form and substance satisfactory to the Lender. Within 30 days of the acquisition of any Asset (which is not otherwise the subject of the security granted by the Security Documents), in each case by the Company or any Restricted Subsidiary, deliver or

479

cause to be delivered to the Lender security of the nature contemplated by Section 2.07 with respect to such Asset, together with related corporate documentation and legal opinions in form and substance satisfactory to the Lender. Cause each Person that becomes a Parent Entity to deliver to the Lender, not later than 30 days after such person becomes a Parent Entity, security of the nature contemplated by Section 2.07 applicable to the Parent Entity, together with related corporate documentation and legal opinions in form and substance satisfactory to the Lender.

- (l) **Material Contracts/Credit Documents.** Perform and observe, and cause each Restricted Subsidiary to perform and observe each Material Contract and each Credit Document (to which the Company or such Restricted Subsidiary is a party), each and every material term and condition thereof within the time period, if any, prescribed for such performance or observance as the case may be, it being understood that, unless permitted by Section 6.03(j), neither the Company nor any Restricted Subsidiary shall grant any waiver of or any indulgence with respect to the performance or observance of any such term or condition without the prior written consent of the Lender.
- (m) **Cure Defects.** Promptly cure or cause to be cured any defects in the execution and delivery of any of the Credit Documents or any of the other agreements, instruments or documents contemplated thereby or executed pursuant thereto or any defects in the validity or enforceability of any of the Credit Documents and execute and deliver or cause to be executed and delivered all such agreements, instruments and other documents as the Lender may consider necessary or desirable for the foregoing purposes.
- (n) [INTENTIONALLY DELETED]
- (o) **Change of Name or Place.** If it or any Restricted Subsidiary intends to change its name, place of business, principal office or chief executive office, notify the Lender in writing of all relevant details of such change at least 30 days prior to the date that any such change is to become effective.
- (p) [INTENTIONALLY DELETED]
- (q) **Further Assurances.** At the Borrower's cost and expense, upon request of the Lender, duly execute and deliver or cause to be duly executed and delivered to the Lender such further instruments, documents and information and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Lender to carry out more effectively the provisions of the Credit Documents.
- (r) **Additional Covenants.**
  - (i) Each of the Company and the Restricted Subsidiaries shall cause their respective management and legal and financial advisors to make themselves available for any discussions or information reasonably required by the Lender or its Consultants (as defined below).

- (ii) In addition to the payment obligations contained in Section 6.01(f), the Company shall pay or cause to be paid in the ordinary course all amounts in respect of employee payroll remittances, wages, pension plan obligations, vacation pay and similar obligations.
- (iii) The Borrower will deliver or cause to be delivered to the Lender, a true and complete copy of all reports (provided that portions of the reports may be redacted) prepared by Ernst & Young Inc. (or any subsequently appointed replacement advisors or consultants) (the "**Reports**") provided by Ernst & Young Inc. to the Agents, including all monthly reports on the Borrower's financial performance including, without limitation, such matters as the Borrower's restructuring initiatives, financial results, and financial covenants. The Reports shall be delivered to the Lender concurrently with their delivery to the Agents.
- (iv) The Lender may, at its sole discretion, appoint one or more advisors or consultants (collectively, the "**Consultants**") on terms and conditions satisfactory to the Lender. Such Consultants may also be appointed to conduct periodic field examinations, collateral appraisals and verification of accounts.
- (v) The Borrower acknowledges and consents to such appointment and agrees to grant access and provide any financial and other information to, and otherwise co-operate with, such Consultants. The Borrower acknowledges and agrees that the Consultants shall report to the Lender, at the Lender's request upon delivery of written notice, on matters including, without limitation, the Borrower's restructuring initiatives, financial results, and financial covenants.
- (vi) At the request of the Lender and in consultation with the Agents, the Company will retain a senior resource satisfactory to the Lender, with significant restructuring experience, to assist the Borrower and with the implementation of and reporting on, its restructuring activities.
- (vii) The Borrower is liable for and agrees to pay the Consultants' fees and disbursements on demand and the fees and disbursements of any advisor retained.

## **Section 6.02 Bank Accounts**

At the request of the Lender, the Company and each Restricted Subsidiary (excluding Australiaco) shall, where possible, (a) open (to the extent not yet open) and maintain all bank accounts with the Agents and provider of cash management services related to such Agents; and (b) deposit on a daily basis all of its receipts from any and all sources into their respective accounts that are maintained with the Agents.

**Section 6.03 Negative Covenants.**

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement, and unless consent is given in accordance with Section 13.01 hereof, the Company shall not, directly or indirectly:

- (a) **Debt.** Create, incur, assume or suffer or permit to exist, or permit any Restricted Subsidiary to create, incur, assume or suffer or permit to exist, any Debt except:
  - (i) Debt outstanding under the Credit Documents;
  - (ii) indebtedness for the deferred purchase price of property or services payable to suppliers of goods and services in the ordinary course of business on customary trade terms;
  - (iii) other Debt not otherwise permitted under this Section 6.03(a), in an aggregate amount outstanding at any time of not more than \$1,500,000;
  - (iv) unsecured Debt owed by (x) the Company to a Restricted Subsidiary, (y) a Restricted Subsidiary to the Company, and (z) by a Restricted Subsidiary to another Restricted Subsidiary, provided that following the Third Closing Date no additional Debt may be incurred by Australiaco from the Company or a Restricted Subsidiary;
  - (v) VTB Subordinated Debt;
  - (vi) Senior Debt;
  - (vii) Debt in an aggregate principal amount not to exceed \$1,296,979.00 in lawful money of Australia, owing by Australiaco to the State of Queensland, and payable over a term of 10 years, commencing on October 13, 2006, representing the purchase price under an option to purchase exercised by Australiaco in respect of Lot 13 Crown Plan S182141, County of War, Parish of Nerang;
  - (viii) Debt owing by Australiaco to Australia and New Zealand Banking Group Limited in an aggregate principal amount not to exceed \$1,525,000 or the Equivalent Amount thereof in any other currency, provided that such Debt shall be secured only by a Letter of Credit or Letters of Credit issued under the Senior Credit Agreement;
  - (ix) the Eckhardt Debt, provided that the terms and conditions of such Debt are subject to the Eckhardt Subordination Agreement;
  - (x) the Kraus Debt, provided that the terms and conditions of such Debt are subject to the Kraus Subordination Agreement; and



- (xi) guarantees issued by Restricted Subsidiaries in favour of Kraus Holdco pursuant to which they guarantee payment by the Company of the indebtedness owing pursuant to the VTB Note.
- (b) **Liens.** Create, incur, assume or suffer or permit to exist, or permit any Restricted Subsidiary to create, incur, assume or suffer or permit to exist, any Lien upon any of its Assets (including, without limitation, Shares in Subsidiaries), whether now owned or hereafter acquired, except for Permitted Liens.
- (c) **Amalgamations, etc.** Enter into, or permit any Restricted Subsidiary to enter into, any reorganization, consolidation, amalgamation, winding up, merger, or similar transaction, except that the Company and any Restricted Subsidiary may enter into such transactions with another Restricted Subsidiary if (v) immediately after giving effect to the transaction, no event shall have occurred and be continuing which constitutes a Default or Event of Default, (w) in the case of a transaction involving: a Canadian Restricted Subsidiary, the continuing corporation is also a corporation existing under the laws of Canada (or one of its provinces or territories); a U.S. Restricted Subsidiary, the continuing corporation is also a corporation existing under the laws of a state of the United States of America, (x) the continuing corporation assumes the relevant Restricted Party's obligations under the Credit Documents pursuant to an agreement in form and substance satisfactory to the Lender, and (y) the Lender receives an opinion of counsel to the Borrower (in form and substance reasonably satisfactory to the Lender) that the transaction complies with this Section 6.03(c).

---

- (d) **Distributions.** Declare, make or pay, or permit any Restricted Subsidiary to declare, make or pay, any Distributions, other than:
  - (i) Distributions by (x) the Company to a Restricted Subsidiary (other than Australiaco), and (y) a Restricted Subsidiary to another Restricted Subsidiary (other than Australiaco); and
  - (ii) Distributions owing pursuant to the VTB Note in accordance with the VTB Subordination Agreement.
- (e) **Dispositions of Property.** Dispose of, or permit any Restricted Subsidiary to Dispose of, directly or indirectly, in one transaction or series of transactions, any of its Assets, whether now owned or hereafter acquired, except:
  - (i) Dispositions of inventory in the normal course of its business for the purpose of carrying on the same, for fair market value, in accordance with customary trade terms applicable to any tangible property that is generally the subject matter of sales by it in the normal course of its business;
  - (ii) Dispositions of equipment for fair market value in connection with the concurrent lease, purchase or replacement of similar equipment of equal or greater value and in respect of which the proceeds of such Disposition are applied against such lease, purchase or replacement;

483

- (iii) Dispositions of any Assets that are redundant to its business, worn out or obsolete and of no material value;
- (iv) Dispositions by (x) the Company to a Restricted Subsidiary (other than Australiaco), and (y) a Restricted Subsidiary to another Restricted Subsidiary (other than Australiaco); and
- (v) Provided that no Default or Event of Default exists at the time of such Disposition, Disposition of Assets not otherwise permitted pursuant to this Section 6.03(e) in an aggregate amount not to exceed, during the term of the Agreement, \$1,000,000.

The Lender shall discharge its Security interest on Assets subject to a Disposition permitted hereunder as soon as practicable upon completion of such Disposition.

- (f) **Acquisitions.** Make any Acquisition or permit any Restricted Subsidiary to make any Acquisition, except that, so long as no Default or Event of Default is continuing or would be created thereby, the Company and its Restricted Subsidiaries may:

- (i) make an Acquisition of (A) all or substantially all of the Assets of a Person or of a business division or unit of a Person used or useful in operating the Business in Canada or the United States; or (B) all of the issued and outstanding securities of a Person (y) the sole business of which is consistent with the Business, and (z) is incorporated pursuant to the laws of Canada or any province thereof or the laws of the United States or any state thereof and the operations of which are in Canada or the United States or both, provided that:

- (A) such Acquisition is accretive to earnings, (B) the acquisition price of any one Investment shall not exceed \$3,000,000 and the aggregate acquisition price of all Investments in any Financial Year shall not exceed \$5,000,000 (in each case, including any assumed Debt and the projected amount of any earn-out provision), (C) any Debt to be assumed in connection with the proposed Acquisition shall be permitted pursuant to Section 6.03(a)(iii) or, in the case of an Acquisition to be held as a wholly-owned Subsidiary, there shall be compliance with Section 6.01(k), (D) the amount available to be borrowed under the Revolving Credit Facility (as defined in the Senior Credit Agreement) pursuant to the terms of this Agreement is (and would remain after the making of the proposed Acquisition) not less than \$5,000,000, and (E) in the case of the acquisition of an offeree issuer, such acquisition is made at the request of or recommended acceptance of the offer to acquire such offeree issuer; or

- (B) In the case of an Acquisition that is not permitted pursuant to Section 6.03(f)(i)(A),

- (I) the Lender shall be satisfied with the ownership, management, organizational and legal structure of the Company and the Restricted Subsidiaries subsequent to the proposed Acquisition and the tax and accounting aspects of the proposed Acquisition;
  - (II) the Lender shall be satisfied with their due diligence review of the proposed Acquisition, including a review of the target's operations, industry, business and financial position, the audited, consolidated (and non-consolidated, if applicable) financial statements for the last two fiscal years of the target, the most recent interim financial statements and pro forma financial statements of the Company on an Adjusted Consolidated Basis including the Assets to be acquired pursuant to the proposed Acquisition for the next following two years evidencing compliance with the financial covenants in Section 6.04;
  - (III) the Lender shall have received evidence satisfactory to it of (i) (x) the repayment of all Debt owing by any target of the proposed Acquisition, or (y) confirmation that any Debt to be assumed in connection with the proposed Acquisition is to be included as Permitted Indebtedness pursuant to Section 6.03(a)(iii) and the amount of such assumed Debt; and (ii) the discharge of all Liens (other than Permitted Liens) on any Assets to be acquired in connection with the proposed Acquisition, provided that the foregoing shall apply in the case of an Acquisition of a Subsidiary notwithstanding Section 6.01(k);
  - (IV) the Lender shall have received in form and substance satisfactory to them an environmental review, which may include a phase 1 audit, of the Assets to be acquired in connection with the proposed Acquisition, and such review shall be signed by officer of the Company; and
  - (V) guarantees, security documents and legal opinions (in form and substance satisfactory to the Lender) as necessary to provide the Lender, with a security interest (subject to Permitted Liens) in respect of any Assets acquired in connection with the proposed Acquisition shall have been delivered to the Lender; and
  - (VI) the Senior Lenders have consented to said Acquisition; and
- (ii) make Capital Expenditures permitted pursuant to Section 6.03(h).

485

- (g) **Transactions with Affiliates.** Enter into or permit any Restricted Subsidiary to enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its Affiliates, or with any Affiliate of any of its partners or shareholders, or with any of its or their directors or officers, or enter into, assume or suffer to exist any employment, management, consulting or analogous agreement or arrangement with any such Person or make any payment thereunder, except (i) a transaction or agreement or arrangement or payment which is upon fair and reasonable terms not less favourable to the Company or any Restricted Subsidiary than would be obtained in a comparable arm's-length transaction, is entered into in the ordinary course of business and in accordance with the Annual Business Plan, and (ii) Debt permitted pursuant to Section 6.03(a)(iv), Section 6.03(a)(ix) and Section 6.03(a)(x).
- (h) **Capital Expenditures.** Make or commit to make or permit any Restricted Subsidiary to make or commit to make, any Capital Expenditure other than Capital Expenditures in an aggregate amount not to exceed \$2,000,000 in each Financial Year subject to any agreement between the Lender and the Borrower as to a different amount for Financial Years subsequent to 2010.
- (i) **Change in Business.** Engage or permit any Restricted Subsidiary to engage in any business other than the Business.
- (j) **Amendments.** Amend or request any waiver of, or waive any of its rights under, or permit any Restricted Subsidiary to amend or request a waiver of, or waive any of its rights, under any Material Contract or any Material Permit, or any guarantee or security in respect thereof, without in each case giving prior notice thereof to the Lender and obtaining the prior written consent of the Lender to such amendment or waiver. Notwithstanding the foregoing, the Company and any Restricted Subsidiary may agree to amend or waive any provision of a Material Contract or Material Permit to cure any ambiguity, to correct or to supplement any provision therein which may be defective or inconsistent with any other provision therein, and may also agree to amend or waive any provision of any Material Contract or Material Permit in the ordinary course of business provided that the provisions of any such Material Contract or Material Permit as so amended or waived are no less favourable to the Company or such Restricted Subsidiary (or the Lender as beneficial secured party) than the provisions of such Material Contract or Material Permit as in effect on the date hereof (or as in effect on the date such Material Contract or Material Permit was originally entered into or issued, if later). The Company shall not allow any amendments to its or any Restricted Subsidiary's constituting documents or by-laws which would be adverse to the Lender interests hereunder or the security interests arising under or created by the Security Documents.
- (k) **Consensual Limitations.** Create, incur, assume or suffer to exist or permit any of its Subsidiaries to create, incur, assume or suffer to exist any consensual limitation or restriction on its ability to:

- (i) make any payments to the Lender, provide the Security to the Lender or perform or observe any of its other covenants and agreements under any of the Credit Documents, as and when required thereunder; or
  - (ii) in the case of the Company or any Restricted Subsidiary, make any Distribution to the Company or any Restricted Subsidiary.
- (l) **Financial Year.** Change its Financial Year for accounting and reporting purposes.
- (m) **Subsidiaries.** Own, or permit any Restricted Subsidiary to own, any interest in any Subsidiary that is not (i) a direct or indirect wholly-owned Subsidiary of the Company, and (ii) formed and existing under the laws of Canada (or any Province or Territory therein) or any State of the United States of America, other than Australiaco.
- (n) **Investments.** Make or own any Investment, or permit any Restricted Subsidiary to make or own any Investment, except that so long as no Default or Event of Default is continuing or would be created thereby the Company and its Restricted Subsidiaries may:
  - (i) the Company and its Restricted Subsidiaries may make an Acquisition permitted pursuant to Section 6.03(f)(i);
  - (ii) the Company and its Restricted Subsidiaries may invest in cash or Cash Equivalents, provided that the same are subject to the Lien in favour of the Lender;
  - (iii) the Company may make Investments in a Restricted Subsidiary (other than Australiaco);
  - (iv) any Restricted Subsidiary may make Investments in the Company or any Restricted Subsidiary (other than Australiaco);
  - (v) the Company and its Restricted Subsidiaries may extend credit in the normal course of its business for the purpose of carrying on the same in accordance with customary commercial terms;
  - (vi) the Company and its Restricted Subsidiaries may receive any non-cash consideration in connection with any Disposition permitted by Section 6.03(e);
  - (vii) the guarantee by the Borrower of the obligations of Kraus JV under the lease between Kraus JV, as lessee, and Bolingbrook Point Phase III, LLC, as lessor, dated as of April 23, 2007 as such lease may be amended, restated or replaced from time to time provided that the financial obligations thereunder are not increased; and



487

- (viii) the Company and its Restricted Subsidiaries may receive any non-cash consideration upon settlement of any claims (including resulting from any bankruptcy, insolvency or similar proceedings) in respect of any trade creditor.
- (o) **Hedging Agreements.** Enter into, or permit any of its Restricted Subsidiaries to enter into, any interest rate, currency rate or commodity hedging agreement (or similar understanding or obligation) except in the normal course of business and not for speculative purposes.
- (p) **Royal Scot.** Permit Royal Scot to (i) own any Assets other than Shares in Kraus JV and deferred tax liabilities, and (ii) carry on any business or conduct any operations other than the ownership of Shares in Kraus JV and deferred tax liabilities.
- (q) **Australiaco.** Notwithstanding any provision in this Agreement, neither the Company nor any Restricted Subsidiary shall (i) advance money, directly or indirectly, to Australiaco; (ii) declare, make or pay any Distributions to Australiaco; (iii) sell, transfer, assign or otherwise dispose of any of its Assets (whether not owned or hereafter acquired) to Australiaco; or (iv) make any Investments in Australiaco.
- (r) **Kraus JV.** Permit Kraus JV to (i) own any Assets, or (ii) carry on any business or conduct any operations other than being a tenant in the premises located at 530 W North Frontage Road, Bolingbrook, Illinois, 60440.
- (s) **Payment Not in Ordinary Course.** Notwithstanding anything to the contrary in this Agreement, the Company and the Restricted Subsidiaries shall not make any payments out of the ordinary course of their respective businesses.
- (t) **VTB Note.** Make any amendments to the VTB Note without first receiving the prior written consent of the Lender.

#### Section 6.04 Financial Covenants.

(1) So long as any amount owing hereunder remains unpaid, and unless consent is given in accordance with Section 13.01 hereof, the Company shall:

- (a) **Total Debt to EBITDA Ratio.** Commencing December 31, 2010, maintain at all times a ratio of Adjusted Consolidated Total Debt at such time to Adjusted Consolidated EBITDA for the twelve month period then most recently ended of not greater than 3.35:1.0. The Lender and the Borrower shall, following the amendment by the Senior Lenders of the senior debt to EBITDA ratio provided for in the Senior Credit Agreement (the "Senior Debt Ratio"), amend the ratio contained herein to conform to the Senior Debt Ratio. In making such amendment, the parties shall take into consideration the differential between the Senior Debt Ratio and the Total Debt to EBITDA Ratio at such time. Such amendment will be subject to the Lender's concluding, acting reasonably, that the Senior Debt Ratio is acceptable.

- (b) **Fixed Charge Coverage Ratio.** Commencing December 31, 2010, maintain at all times a Fixed Charge Coverage Ratio of not less than 1.20:1. The Lender and the Borrower shall, following the amendment by the Senior Lenders of the fixed charge coverage ratio contained in the Senior Credit Agreement (the "Senior FC Ratio"), amend the ratio contained herein to conform to the Senior FC Ratio. Such amendment will be subject to the Lender's concluding, acting reasonably, that the Senior FC Ratio is acceptable.
- (c) **Minimum Tangible Net Worth.** Commencing December 31, 2010, maintain at all times Tangible Net Worth of not less than \$50,000,000, measured at the end of each month. The Lender and the Borrower shall, following the amendment by the Senior Lenders of the minimum tangible net worth contained in the Senior Credit Agreement (the "Senior TNW"), amend the ratio contained herein to conform to the Senior TNW. Such amendment will be subject to the Lender's concluding, acting reasonably, that the Senior TNW is acceptable.
- (d) **Minimum EBITDA.** On a cumulative basis for each calendar month in Financial Year 2010, the Company shall maintain a minimum Adjusted Consolidated EBITDA that is equal to or greater than the projected monthly cumulative Adjusted Consolidated EBITDA for each such month pursuant to the 2010 Business Plan, with permitted negative variances as follows: (i) January - \$350,000, (ii) February - \$650,000, (iii) March to and including June - \$1,000,000, (iv) July to and including September - \$1,500,000, (iv) October to and including November - \$2,200,000, and (v) December - \$1,500,000, as provided for in Schedule 6.04(d).

## ARTICLE 7 EVENTS OF DEFAULT

### Section 7.01 Events of Default.

If any of the following events (each an "Event of Default") shall occur and be continuing:

- (i) the Borrower shall fail to pay any principal amount with respect to the Loan when due and payable hereunder;
- (ii) the Borrower shall fail to pay any interest, fee or other amount (except principal) when due and payable under any of the Credit Documents and such failure continues for five days or more;
- (iii) the Company defaults in the performance or observance of any term or covenant contained in Section 6.03 or Section 6.04;
- (iv) the Company defaults in the performance or observance of any term or covenant contained in Section 2.07 and such default continues for 15 days or more after the earlier of the date that: (x) the Company becomes aware of such default, or (y) written notice of such default is given to it by the Lender;

489

- (v) subject to clauses (i), (ii), (iii) and (iv) above, if the Company or any of its Restricted Subsidiaries defaults in the performance or observance of any term or covenant contained in any of the Credit Documents and such default continues for 30 days or more after the earlier of the date that: (x) the Company or such Restricted Subsidiary becomes aware of such default, or (y) written notice of such default is given to it by the Lender;
- (vi) if any representation or warranty contained in any of the Credit Documents or in any certificate delivered thereunder by or on behalf of the Company or any of its Restricted Subsidiaries shall be untrue in any material respect on the date as of which it was made;
- (vii) the Company or any of its Restricted Subsidiaries fails to perform or observe any material term, covenant or agreement in any Material Contract on its part to be performed or observed where such failure could reasonably be expected to have a Material Adverse Effect; or any Material Contract is terminated, revoked or permitted to lapse (other than in accordance with its terms or as approved by the Lender) or any party to any Material Contract delivers a notice of termination or revocation (other than in accordance with its terms or as approved by the Lender) in respect of the Material Contract;
- (viii) (x) the Company or any of its Subsidiaries shall fail to pay the principal of, or premium or interest on any of its Debt (excluding Debt under this Agreement) which is outstanding in an aggregate principal amount exceeding \$1,000,000 (or the Equivalent Amount in any other currency), when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt without waiver of failure by the holder of such Debt; or (y) any other event occurs or condition exists, and continues after the applicable grace period, if any, specified in any agreement or instrument relating to any such Debt without waiver by the holder of such Debt, if the effect of such event is to accelerate, or permit the acceleration of such Debt; or (z) any such Debt shall be declared to be due and payable in accordance with its terms prior to the stated maturity thereof;
- (ix) any judgment or order for the payment of money aggregating in excess of (a) \$500,000 (or the Equivalent Amount in any other currency) per judgment or order after application of insurance proceeds; or (b) aggregating in any Financial Year in excess of \$1,000,000 (or the Equivalent Amount in any other currency) on a consolidated basis after application of insurance proceeds shall be rendered against the Company or any of its Subsidiaries in respect of which enforcement proceedings have been commenced and such proceedings have not been effectively stayed and there is a period of 45 consecutive days during which (x) such judgement has not been paid or settled, or (y) a stay of enforcement of the judgment (by reason of pending appeal or otherwise) is not in effect;

- (x) the Company or any of its Subsidiaries incurs any Environmental Liabilities which will require expenditures (i) for any one incurrence, in excess of \$1,000,000 (or the Equivalent Amount in any other currency) after application of insurance proceeds, or (ii) aggregating in any Financial Year on a consolidated basis, in excess of \$1,000,000 (or the Equivalent Amount in any other currency) after application of insurance proceeds;
- (xi) the Company or any of its Subsidiaries (i) becomes insolvent or generally unable to pay its debts as they become due; (ii) admits in writing its inability to pay its debts generally or makes a general assignment for the benefit of creditors; (iii) institutes or has instituted against it any proceeding involving or affecting its creditors seeking (x) to adjudicate it a bankrupt or insolvent, (y) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts, in each case, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors including any plan of compromise or arrangement or other corporate proceeding relating thereto, or (z) the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its properties and assets, and in the case of any such proceeding instituted against it (but not instituted by it), either the proceeding remained undismissed or unstayed for a period of 10 Business Days, or any of the actions sought in such proceeding (including the entry of an order for relief against it or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its properties and assets) occurs; or (iv) takes any corporate action to authorize any of the above actions;
- (xii) there shall be any Impermissible Qualification;
- (xiii) the validity of any of the Credit Documents or the applicability thereof to the Accommodations or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of the Company or any Restricted Subsidiary or any other party thereto (other than the Lender);
- (xiv) any of the Credit Documents executed and delivered by the Company or any Restricted Subsidiary shall, except as a result of the acts or omissions of the Lender, (i) fail to provide the Lender the Liens, rights, title, interest, remedies, powers or privileges intended to be created thereby, including a Lien on the collateral described therein, subject only, as to priority, to Permitted Liens; or (ii) cease to be in full force and effect, and in each case, such failure shall remain unremedied for ten (10) Business Days following notice thereof by the Lender to the Company;
- (xv) any Material Permit shall cease to be in full force and effect or there shall occur any breach of any Material Permit resulting in its revocation or termination;

- (xvi) any interest rate hedge or foreign exchange hedge shall be terminated prior to its maturity and require the Company or any Restricted Subsidiary to pay a termination amount in respect thereof in excess of \$500,000 (or the Equivalent Amount in any other currency);
- (xvii) there shall occur after the date hereof any event which has a Material Adverse Effect;
- (xviii) there shall occur a Change of Control;
- (xix) the occurrence and continuance of a default under the VTB Note;
- (xx) the failure by the Borrower to provide the Compensation Compliance Certificate to the Lender within 60 days of the end of the Company's Financial Year and, if not received within such time period, such failure continues for an additional 30 days;
- (xxi) should the compensation paid to management of the Company and the Borrower exceed such amounts as has been agreed to between the Lender and the Company from time to time; and
- (xxii) the failure by the Company to deliver to the Lender a Consolidated Free Cash Flow Certificate within 120 days as required by the terms hereof and such default continues for a period of 30 days or more;

then, the Lender may, by written notice to the Company declare the obligations to be immediately due and payable, without presentment, demand, protest or further notice of any kind (except as required by law), all of which are hereby expressly waived by the Borrower.

#### **Section 7.02 Remedies Upon Demand and Default.**

(1) Upon a declaration that the Obligations are immediately due and payable pursuant to Section 7.01, the Lender shall commence such legal action or proceedings as it, in its sole discretion, may deem expedient, including the commencement of enforcement proceedings under the Credit Documents or any other security granted by the Company, any Restricted Subsidiary or any other Person to the Lender, all without any additional notice, presentation, demand, protest, notice of dishonour, entering into of possession of any of the Assets, or any other action or notice (except as required by law), all of which the Company and each Restricted Subsidiary hereby expressly waives.

(2) The rights and remedies of the Lender hereunder and under the other Credit Documents are cumulative and are in addition to and not in substitution for any other rights or remedies. Nothing contained herein or in the Credit Documents or any other security hereafter held by the Lender, with respect to the indebtedness or liability of the Company, any Restricted Subsidiary or any other Person to the Lender, or any part thereof, nor any act or omission of the Lender with respect to the Credit Documents, the collateral subject thereto or such other security, shall in any way prejudice or affect the rights, remedies and powers of the Lender hereunder or under the Credit Documents.



## ARTICLE 8 YIELD PROTECTION

### Section 8.01 Increased Costs.

- (a) **Increased Costs Generally.** If any Change in Law shall:
- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;
  - (ii) subject the Lender to any Tax of any kind whatsoever with respect to this Agreement or the Loan, or change the basis of taxation of payments to the Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 8.02 and the imposition, or any change in the rate, of any Excluded Tax payable by the Lender; or
  - (iii) impose on the Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or the Loan;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining, or to increase the cost to the Lender, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount), then upon request of the Lender the Borrower will pay to the Lender, or cause the Lender to be paid, such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

- (b) **Capital Requirements.** If the Lender determines that any Change in Law affecting the Lender or any lending office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement, the Loan, to a level below that which the Lender or its holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will pay to the Lender, or cause the Lender to be paid, such additional amount or amounts as will compensate the Lender or its holding company for any such reduction suffered.

- (c) **Certificates for Reimbursement.** A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section ("**Additional Compensation**"), including a description of the event by reason of which it believes it is entitled to such compensation, and supplying reasonable supporting evidence (including, in the event of a Change of Law, a photocopy of the Applicable Law evidencing such change) reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay the Lender, or cause the Lender to be paid, the amount

493

shown as due on any such certificate within 10 days after receipt thereof. In the event the Lender subsequently recovers all or part of the Additional Compensation paid by the Borrower, it shall promptly repay an equal amount to the Borrower. The obligation to pay such Additional Compensation for subsequent periods will continue until the termination of the Change in Law, change in capital requirement or the lapse or cessation of the Change in Law giving rise to the initial Additional Compensation. The Lender shall make reasonable efforts to limit the incidence of any such Additional Compensation and seek recovery for the account of the Borrower upon the Borrower's request at the Borrower's expense, provided the Lender in its reasonable determination suffers no appreciable economic, legal, regulatory or other disadvantage. Notwithstanding the foregoing provisions, the Lender shall only be entitled to rely upon the provisions of this Section 8.01 if and for so long as it is not treating the Borrower in any materially different or in any less favourable manner than is applicable to any other customers of the Lender, where such other customers are bound by similar provisions to the foregoing provisions of this Section 8.01.

- (d) **Delay in Requests.** Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation, except that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

## **Section 8.02 Taxes.**

- (a) **Payments Subject to Taxes.** If the Company, any Restricted Subsidiary or the Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of the Company or any Restricted Subsidiary hereunder or under any other Credit Document, then (i) the sum payable shall be increased by the Company or such Restricted Subsidiary when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Company or such Restricted Subsidiary shall make any such deductions required to be made by it under Applicable Law and (iii) the Company or such Restricted Subsidiary shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

- (b) **Payment of Other Taxes.** Without limiting the provisions of paragraph (a) above, the Company and each Restricted Subsidiary shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.
- (c) **Indemnification.** The Borrower shall indemnify the Lender, within 15 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) that arise from any payment by or on account of any obligation of the Company or such Restricted Subsidiary hereunder or under any Credit Document paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender, shall be conclusive absent manifest error. In the event the Lender subsequently recovers all or part of the payment made under this Section paid by the Borrower, it shall promptly repay an equal amount to the Borrower. The Lender shall make reasonable efforts to limit the incidence of any payments under this Section and seek recovery for the account of the Borrower upon the Borrower's request at the Borrower's expense, provided the Lender in its reasonable determination suffers no appreciable economic, legal, regulatory or other disadvantage.
- (d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Company, the Borrower or any Restricted Subsidiary to a Governmental Authority, the Company, the Borrower or such Restricted Subsidiary shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

## ARTICLE 9 RIGHT OF SETOFF

### Section 9.01 Right of Setoff.

If an Event of Default has occurred and is continuing, the Lender and its Affiliates are hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or any such Affiliate to or for the credit or the account of the Company or any Restricted Subsidiary against any and all of the obligations of the Company or any Restricted Subsidiary now or hereafter existing under this Agreement or any other Credit Document to the Lender, irrespective of whether or not the Lender has made any demand under this Agreement or any other Credit Document and although such obligations of the Company or any Restricted Subsidiary may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and

bankers' lien) that the Lender or its respective Affiliates may have. The Lender agrees to promptly notify the Company after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application.

## ARTICLE 10 NOTICES: EFFECTIVENESS

### Section 10.01 Notices, etc.

- (a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement or, if to the Lender, to it at its address or telecopier number specified in the Register.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

- (b) **Change of Address, Etc.** Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

## ARTICLE 11 EXPENSES; INDEMNITY: DAMAGE WAIVER

### Section 11.01 Expenses; Indemnity: Damage Waiver.

- (a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Lender, including the reasonable fees, charges and disbursements of counsel for the Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all reasonable out-of-pocket expenses incurred by the Lender including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Credit Documents, including its rights under this Section, or in connection with the Loan made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loans.

- (b) **Indemnification by the Company.** The Borrower shall indemnify the Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Company or any Restricted Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the Company or any Restricted Subsidiary of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) the Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of any Hazardous Substance on or from any property owned or operated by the Company, the Borrower or any of their Subsidiaries, or any Environmental Liabilities related in any way to the Company, the Borrower or any of their Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Company or any Restricted Subsidiary and regardless of whether any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnatee or (y) result from a claim brought by the Company or any Restricted Subsidiary against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Credit Document, if the Company or such Restricted Subsidiary has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Section 8.01, Section 8.02 and Section 11.01(a).
- (c) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Law, the Company and the Borrower shall not assert, and hereby waive, any claim against any Indemnatee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnatee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.
- (d) **Payments.** All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Lender setting forth the amount or amounts owing to the Lender or Related Party, as the case may be, as specified in this Section,



including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

## ARTICLE 12 SUCCESSORS AND ASSIGNS

### Section 12.01 Successors and Assigns.

- (a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Company and the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender and the Lender may not assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of the Lender) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) **Assignments by Lender.** The Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Obligations at the time owing to it); provided that:
- (i) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Obligations owing to it or in the case of an assignment to an Affiliate of the Lender or an Approved Fund with respect to the Lender, the principal outstanding balance of the Obligations of the assigning Lender subject to each such assignment shall not be less than \$1,000,000, unless the Borrower otherwise consents to a lower amount (each such consent not to be unreasonably withheld or delayed);
  - (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Obligations outstanding;
  - (iii) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless an Event of Default has occurred and is continuing; and

From and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of

the interest assigned by such Assignment and Assumption, have the rights and obligations of the assigning Lender under this Agreement and the other Credit Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article 8 and Article 11, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower.

- (c) **Assignments Generally.** Notwithstanding anything contained herein to the contrary, should the Lender, prior to the existence of an Event of Default, assign any portion of the Loan to a Person that is non-resident of Canada (as such term is contemplated by the Income Tax Act (*Canada*)), such assignee shall not be entitled to the benefits of Section 8.02 if such additional amounts payable thereunder to the assignee would not be payable if the assignee was not a non-resident of Canada.

- (d) **Participations.** The Lender may at any time, with the consent of the Borrower (other than to an Approved Fund), sell participations to any Person (other than a natural person, the Borrower or any Affiliate of the Borrower) (each, a "**Participant**") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Obligations owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. Any payment by a Participant to the Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new loan to the Borrower.

Subject to paragraph (e) of this Section, the Company and the Borrower agrees that each Participant shall be entitled to the benefits of Article 8 to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Article 8 as though it were the Lender, provided such Participant is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

- (e) **Limitations upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 8.01 and Section 8.02 than the Lender would have been entitled to receive with respect to the participation sold to such Participant.
- (f) **Certain Pledges.** The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, but no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

## ARTICLE 13 AMENDMENTS AND WAIVERS

### Section 13.01 Amendments and Waivers

No amendment or waiver of any provision of any of the Credit Documents, nor consent to any departure by the Company or the Borrower or any other Person from such provisions, shall be effective unless in writing and approved by the Lender. Any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

### Section 13.02 Judgment Currency.

- (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due to the Lender in any currency (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Lender could purchase the Original Currency with the Other Currency on the Business Day preceding the day on which final judgment is given or, if permitted by Applicable Law, on the day on which the judgment is paid or satisfied.
- (b) The obligations of the Company or the Borrower in respect of any sum due in the Original Currency from it to the Lender under any of the Credit Documents 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 the Other Currency, the Lender may, in accordance with 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 the Lender in the Original Currency, the Company or the Borrower agrees, as a separate obligation and notwithstanding the judgment, to indemnify the Lender, against any loss, and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Lender in the Original Currency, the Lender shall remit such excess to the Company or the Borrower.

### Section 13.03 Entire Agreement

This Agreement amends and restates the Original Credit Agreement, and together with all other Credit Documents constitute the entire agreement between the parties to this

Agreement with respect to the Loan and the other matters contemplated in this Agreement as of the date of this Agreement, and supersedes the Original Credit Agreement and all other negotiations and discussions, whether oral or written, with respect to the Loan. Nothing in this Agreement shall constitute a release or novation of any indebtedness outstanding under the Original Credit Agreement.

#### **Section 13.04 Anti-Money Laundering Legislation**

The Borrower acknowledges that, pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lender may be required to obtain, verify and record information regarding the Borrower, the Company and the Restricted Subsidiaries, their directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Persons, and the transactions contemplated hereby. The Borrower shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by the Lender, or any prospective assignee or participant of the Lender, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

### **ARTICLE 14 GOVERNING LAW; JURISDICTION; ETC.**

#### **Section 14.01 Governing Law; Jurisdiction; Etc.**

- (a) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that Province.
- (b) **Submission to Jurisdiction.** The Company and the Borrower irrevocably and unconditionally submit, for itself and its property, to the nonexclusive jurisdiction of the courts of 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 other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Credit Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against the Borrower or its properties in the courts of any jurisdiction.
- (c) **Waiver of Venue.** The Company and the Borrower irrevocably and unconditionally waive, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defence of an

501

inconvenient forum to the maintenance of such action or proceeding in any such court.

## ARTICLE 15 WAIVER OF JURY TRIAL

### Section 15.01 Waiver of Jury Trial.

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or any other Credit Document or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this agreement and the other credit documents by, among other things, the mutual waivers and certifications in this Section.

## ARTICLE 16 COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION

### Section 16.01 Counterparts; Integration; Effectiveness; Electronic Execution

- (a) **Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when it has been executed by the Lender and when the Lender has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.
- (b) **Electronic Execution of Assignments.** The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.



**ARTICLE 17**  
**TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY**

**Section 17.01 Treatment of Certain Information: Confidentiality.**

(1) The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (to the extent necessary to administer or enforce this Agreement and the other Credit Documents) (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority having jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws included in "Law" or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Company or any Restricted Subsidiary and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender on a non-confidential basis from a source other than the Company or any of its Subsidiaries. If the Lender is requested or required to disclose any Information pursuant to or as required by Applicable Laws or by an subpoena or similar legal process, the Lender shall use its reasonable commercial efforts to provide the Borrower with notice of such requests or obligation in sufficient time so that the Borrower may seek an appropriate protective order or waive the Lender's compliance with the provisions of this Section, and the Lender shall co-operate with the Borrower in obtaining any such protective order.

(2) For purposes of this Section, "**Information**" means all information received from the Company or any Restricted Subsidiary relating to the Company or any Restricted Subsidiary or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Lender may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

(3) In addition, and notwithstanding anything herein to the contrary, the Lender may provide information concerning the Company and its Subsidiaries and the credit facilities established

503

herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

**Section 17.02 USA Patriot Act.**

The Lender hereby notifies the Company and the Borrower that pursuant to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), they are or may be required to obtain, verify and record information that identifies any of the parties related to this Agreement, which information includes the name and address of any of the parties and other information that will allow the Lender to identify the parties in accordance with the Patriot Act.

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

**BMO CAPITAL CORPORATION**

Per: \_\_\_\_\_

Authorized Signing Officer

Per: \_\_\_\_\_

Authorized Signing Officer


Address: BMO Capital Corporation  
100 King Street West  
First Canadian Place  
11th Floor  
Toronto, Ontario  
M5X 1A1

Attention: Managing Director

Telecopier: (416) 867-4108

## STRUDEX FIBRES LIMITED

Per:



Authorized Signing Officer

Per:


Authorized Signing Officer

Address: 65 Northfield Dr. W.  
Waterloo, ON N2J 4J4

Telephone (519) 884-2310 x. 212  
Telecopier: (519) 745-8615

Attention: Harold Kraus

KRAUS INC.

Per:   
Authorized Signing Officer

Per: \_\_\_\_\_  
Authorized Signing Officer

Address: 65 Northfield Dr. W.  
Waterloo, ON N2J 4J4

Telephone: (519) 884-2310 x. 212  
Telecopier: (519) 745-8615

Attention: Harold Kraus



## TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION.....	1
Section 1.01 Defined Terms.....	1
Section 1.02 Gender and Number.....	21
Section 1.03 Interpretation not Affected by Headings, etc.....	21
Section 1.04 Currency.....	22
Section 1.05 Certain Phrases, etc.....	22
Section 1.06 Accounting Terms.....	22
Section 1.07 Non-Business Days.....	22
Section 1.08 Incorporation of Schedules.....	22
Section 1.09 Knowledge.....	22
Section 1.10 Reference to Lender.....	23
Section 1.11 References to Time of Day.....	23
Section 1.12 References to Applicable Laws.....	23
Section 1.13 References to Agreements.....	23
ARTICLE 2 THE LOAN.....	23
Section 2.01 Establishment of Loan.....	23
Section 2.02 Use of Proceeds.....	23
Section 2.03 Mandatory Repayments.....	23
Section 2.04 Mandatory Prepayments.....	24
Section 2.05 Optional Prepayments and Reductions of Commitments.....	25
Section 2.06 Payments under this Agreement.....	25
Section 2.07 Guarantees and Security.....	26
ARTICLE 3 INTEREST, ETC.....	27
Section 3.01 Interest.....	27
Section 3.02 Overdue Principal and Interest, Defaults.....	28
Section 3.03 Interest on Other Amounts.....	28
Section 3.04 Computations of Interest and Fees.....	28
Section 3.05 Place of Advances, Repayments.....	29
Section 3.06 Evidence of Obligations (Noteless Advances).....	29
ARTICLE 4 CONDITIONS TO EFFECTIVENESS.....	30
Section 4.01 Conditions Precedent to the Advance of the Loan.....	30
Section 4.02 Conditions Precedent to the Effectiveness of this Agreement.....	31
ARTICLE 5 REPRESENTATIONS AND WARRANTIES.....	33
Section 5.01 Representations and Warranties.....	33
Section 5.02 Survival of Representations and Warranties.....	41
ARTICLE 6 COVENANTS OF THE COMPANY.....	42

Section 6.01	Affirmative Covenants.....	42
Section 6.02	Bank Accounts.....	48
Section 6.03	Negative Covenants.....	49
Section 6.04	Financial Covenants.....	55
ARTICLE 7 EVENTS OF DEFAULT .....		56
Section 7.01	Events of Default.....	56
Section 7.02	Remedies Upon Demand and Default.....	59
ARTICLE 8 YIELD PROTECTION.....		60
Section 8.01	Increased Costs.....	60
Section 8.02	Taxes.....	61
ARTICLE 9 RIGHT OF SETOFF.....		62
Section 9.01	Right of Setoff.....	62
ARTICLE 10 NOTICES: EFFECTIVENESS.....		63
Section 10.01	Notices, etc.....	63
ARTICLE 11 EXPENSES; INDEMNITY: DAMAGE WAIVER .....		63
Section 11.01	Expenses; Indemnity: Damage Waiver.....	63
ARTICLE 12 SUCCESSORS AND ASSIGNS .....		65
Section 12.01	Successors and Assigns.....	65
ARTICLE 13 AMENDMENTS AND WAIVERS .....		67
Section 13.01	Amendments and Waivers.....	67
Section 13.02	Judgment Currency.....	67
Section 13.03	Entire Agreement.....	67
Section 13.04	Anti-Money Laundering Legislation .....	68
ARTICLE 14 GOVERNING LAW; JURISDICTION; ETC.....		68
Section 14.01	Governing Law; Jurisdiction; Etc.....	68
ARTICLE 15 WAIVER OF JURY TRIAL.....		69
Section 15.01	Waiver of Jury Trial.....	69
ARTICLE 16 COUNTERPARTS; INTEGRATION; EFFECTIVENESS; ELECTRONIC EXECUTION.....		69

Section 16.01	Counterparts; Integration; Effectiveness; Electronic Execution.....	69
ARTICLE 17 TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY .....		70
Section 17.01	Treatment of Certain Information: Confidentiality. ....	70
Section 17.02	USA Patriot Act.....	71



THIS AMENDING AGREEMENT made as of the 7<sup>th</sup> day of March, 2011

AMONG:

**KRAUS INC.**

(hereinafter called the "Borrower"),

**OF THE FIRST PART**

- and -

**STRUDEX FIBRES LIMITED**

(hereinafter called the "Company"),

**OF THE SECOND PART**

- and -

**BMO CAPITAL CORPORATION**

as Lender

(hereinafter called the "Lender")

**OF THE THIRD PART**

WHEREAS Borrower, the Company and the Lender are parties to an amended and restated credit agreement dated as of November 23, 2010 (the "Credit Agreement");

AND WHEREAS the parties hereto wish to amend the Credit Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the parties hereto agree to amend the Credit Agreement as provided herein:

#### **Section 1 General**

In this Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement. In the event of a conflict between the terms of this Amending Agreement and the Credit Agreement, the terms of this Amending Agreement shall govern.

#### **Section 2 To be Read with Credit Agreement**

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and this Amending Agreement were contained in one agreement. The term "Agreement" when used in the Credit Agreement means the Credit Agreement as amended, supplemented or modified from time to time. Except as specifically amended by this Amending Agreement, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.



### Section 3 Amendments

#### 3.1 Definitions

- (a) Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in their proper alphabetical order:

**"2012 Business Plan"** means the monthly financial projections of the Company and the Restricted Subsidiaries for Financial Year 2012 (including income statements, balance sheets, statements of cash flow, covenant calculations and management's discussion of assumptions and underlying projections).

**"Amending Agreement"** means the amending agreement dated March 7, 2011 among the Lender, the Borrower and the Company.

**"Existing Event of Default"** means the failure by the Company to comply as at December 31, 2010 with the financial covenants provided for in Section 6.04 of the Credit Agreement.

**"Fourth Closing Date"** means March 7, 2011.

- (b) Schedule 6.04(d) of the Credit Agreement is deleted in its entirety.
- (c) Section 1.01 of the Credit Agreement is hereby amended by adding the following text at the end of the definition of **"Adjusted Consolidated EBITDA"**:

"For greater certainty, the calculation of Adjusted Consolidated EBITDA shall exclude the amount of any loss on the sale of non-prime inventory incurred by the Company in Financial Year 2011 up to a maximum of \$1,000,000 (and any amounts in excess of \$1,000,000 shall be included in the calculation of Adjusted Consolidated EBITDA)."

- (d) Section 6.01(a) of the Credit Agreement is hereby amended by deleting "and" in subsection (K), deleting the "." in subsection (L) and replacing such deletion with ";and" and adding the following new subsections (M) and (N):

"(M) concurrent with the delivery by the Company of its results for the month ended October 31, 2011, the Company shall prepare and provide to the Lender a detailed calculation of the covenants provided for in Section 6.04(1)(a), Section 6.04(1)(b) and Section 6.04(1)(c) of the Credit Agreement for the first three financial quarters of 2011 and a forecast of such financial covenants as of December 31, 2011; and

(N) on or prior to November 30, 2011, the Company shall deliver to the Lender its 2012 Business Plan."

- (e) Section 6.03(h) of the Credit Agreement is hereby deleted in its entirety and replaced as follows:

"Make or commit to make or permit any Restricted Subsidiary to make or commit to make, any unfinanced Capital Expenditures other than unfinanced Capital Expenditures in an aggregate amount not to exceed (i) for Financial Year 2011, \$2,000,000, and (ii) for each subsequent Financial Year that amount agreed to between the Lender and the Borrower prior to the commencement of each such Financial Year."

- (f) Section 6.04(d) of the Credit Agreement is hereby deleted in its entirety and replaced as follows:

"(d) **Minimum EBITDA.** On a cumulative basis for each calendar month in Financial Year 2011, the Company shall maintain a minimum Adjusted Consolidated EBITDA that is equal to or greater than the projected monthly cumulative Adjusted Consolidated EBITDA for each such month pursuant to the 2011 Business Plan as specified on Schedule A attached to the Amending Agreement, with permitted negative variance as follows: (i) January 2011: \$150,000; (ii) February 2011: \$300,000; (iii) March 2011: \$450,000; (iv) April 2011: \$600,000; (v) May 2011: \$750,000; (vi) June 2011: \$1,000,000; and (vii) July 2011 to and including December, 2011: \$1,250,000."

- (g) Section 6.04 of the Credit Agreement is hereby amended by adding a new subsection (e) as follows:

"(e) **Temporary Suspension of Certain Financial Covenants.** The Lender and the Borrower agree that the financial covenants provided for in Section 6.04(a), Section 6.04(b) and Section 6.04(c) of this Agreement are, commencing on the Closing Date, temporarily suspended with such suspension ending on December 30, 2011. For certainty, each of the foregoing financial covenants will cease to be suspended and shall thereafter immediately apply as at December 31, 2011 and for all times thereafter as provided for in such subsections."

#### **Section 4 Consultants**

- (a) The Lender is entitled to appoint advisors or consultants (collectively, the "Consultants") to the Lender on terms and conditions satisfactory to the Lender. Such Consultants may also be appointed to conduct periodic field examinations, collateral appraisals and verification of accounts.
- (b) The Borrower and the Company acknowledge and consent to such appointment and agree to grant access and provide any financial and other information to, and otherwise co-operate with, such Consultants.
- (c) On a monthly basis, the Senior Lenders shall provide to the Lender the Ernst & Young Inc. prepared report regarding the Borrower's financial performance for the month including, without limitation, such matters as the Borrower's restructuring initiatives, financial results, and financial covenants.

- (d) At the request of the Lender, the Company will retain a senior resource satisfactory to the Lender, with significant restructuring experience, to assist the Borrower with the implementation of and reporting on restructuring activities.
- (e) The Borrower is liable for and agrees to pay the Consultants' fees and disbursements (including the fees and disbursements of any consultant retained with respect to any restructuring).

**Section 5 Waiver of Existing Default; Reservation of Rights**

- (a) **Amendment.** This Amending Agreement is limited as specified and the execution, delivery and effectiveness of this Amending Agreement shall not, except as expressly provided, operate as a modification, acceptance or waiver of any provision of the Credit Agreement or any Credit Document or any right, power or remedy of the Lender thereunder.
- (b) **Waiver.** The Lender hereby acknowledges the Existing Event of Default and, subject to the terms and conditions hereof, hereby waives such Event of Default.
- (c) **Reservation of Rights.** Notwithstanding the foregoing or anything contained in this Amending Agreement to the contrary, the Lender expressly reserves the right to exercise any and all of its rights and remedies under the Credit Agreement, any Credit Document and applicable law in respect of any Default or Event of Default (other than the Existing Event of Default which has been waived). The Lender hereby reserves the right to preserve and protect its interest in the property subject to the Lender's security and to take any action that the Lender deems appropriate if circumstances indicate to the Lender that its security is in jeopardy.

**Section 6 Representations and Warranties**

- (a) In order to induce the Lender to enter into this Amending Agreement, the Borrower and the Company represent and warrant to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:
  - (i) the representations and warranties set forth in Article Five of the Credit Agreement continue to be true and correct as of the date hereof with reference to facts subsisting on such date except for those representations and warranties which speak to a specific date;
  - (ii) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Amending Agreement by the Borrower and the Company. The Borrower and the Company have duly executed and delivered this Amending Agreement. This Amending Agreement is a legal, valid and binding obligation of the Borrower and the Company enforceable against each of them by the Lender in accordance with its terms; and

- (iii) as of the date hereof, no Default or Event of Default exists other than the Existing Event of Default.

#### **Section 7 Conditions Precedent**

This Amending Agreement shall not be effective until the Lender is satisfied that the following terms and conditions have been fulfilled:

- (a) this Amending Agreement executed by the Borrower, the Company and the Lender;
- (b) no Material Adverse Effect having occurred;
- (c) a certified copy of a fully executed amendment to the Senior Credit Agreement in form and substance reasonably satisfactory to the Lender;
- (d) written confirmation to the Lender from the Senior Agent on behalf of the Senior Lenders, consenting to the execution and delivery by the Borrower and the Company of this Amending Agreement;
- (e) delivery to the Lender of an acknowledgement and confirmation of each Grantor as to, *inter alia*, the continuing effectiveness of its guarantee and the Security delivered by it;
- (f) all legal and consulting fees, costs and disbursements (including all goods and services, sales and other taxes) incurred by the Lender (including, without limitation, those of McCarthy Tétrault LLP) in connection with the preparation, negotiation, completion, execution, delivery and review of this Amending Agreement shall have been paid in full;
- (g) other than the Existing Event of Default which has been waived, no Default or Event of Default shall be in existence;
- (h) certified copies of resolutions authorizing the entry into this Amending Agreement from each of the Borrower and the Company; and
- (i) copies of such further and other documents as required by the Lender, acting reasonably.

#### **Section 8 Release of Claims**

The Company and each Restricted Subsidiary each hereby covenants not to bring any action, application, petition, suit or other proceeding against the Lender, the Affiliates or any Consultants or any other advisors engaged by any of them, or their respective officers, directors, employees, agents, successors and assigns (the "Released Parties") and hereby irrevocably and unconditionally release and forever discharge the Released Parties of and from all manner of actions, causes of action, suits, debts, liabilities, costs, claims, accountings and demands, in law, in equity or otherwise, which each of them may now have or might otherwise be entitled to make (collectively, the "Claims") for or by any reason of any cause, matter or thing whatsoever

including, without limitation, any Claims pursuant to, arising from or in connection with any matters relating to the affairs among the Lenders and the Company and each Restricted Subsidiary prior to the date hereof, whether in connection with (a) the Credit Agreement and Security Documents; (b) the enforcement of the Lender's rights and remedies against the property, assets and undertaking of the Company and each Restricted Subsidiary; or (c) otherwise, save and except for any fraud, wilful misconduct or gross negligence. The Company and the Restricted Subsidiaries each further undertake, covenant and agree to make no claim and to take no action or proceeding whatsoever against any person not a party to the release granted herein that could result in any claim over against the Released Parties, in respect of any and all matters or things released in this release, or for any form of contributions, indemnity or other relief whether arising at law, equity or under the provisions of the *Negligence Act* R.S.O. 1990 c. N-1.

#### **Section 9 Continuance of Credit Agreement and Security**

The Credit Agreement, as changed, altered, amended or modified by this Amending Agreement, shall be and continue in full force and effect and is hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein. It is agreed and confirmed that after giving effect to this Amending Agreement that the Security as it relates to the Borrower secures, *inter alia*, the payment of all of the obligations of the Borrower including, without limitation, the obligations arising under the Credit Agreement, as amended by the terms of this Amending Agreement.

#### **Section 10 Further Assurances**

Each of the Borrower, the Company and the Restricted Subsidiaries shall provide such further or additional documents and information including, without limitation, financing statements and financing change statements, whether provided for in the Credit Documents or otherwise, as the Lender may require.

#### **Section 11 Counterparts**

This Amending Agreement may be executed in any number of separate counterparts (whether by facsimile, pdf or otherwise), each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

#### **Section 12 Governing Law**

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

[Remainder of Page Intentionally Left Blank]



S-1

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

**KRAUS INC.**By: X. Epphardt

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

**STRUDEX FIBRES LIMITED**By: X. Epphardt

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

**BMO CAPITAL CORPORATION**

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

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

S-1

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

**KRAUS INC.**

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

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

**STRUDEX FIBRES LIMITED**

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

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

**BMO CAPITAL CORPORATION**

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

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

M. KAMIL

# SCHEDULE A

## MINIMUM CUMULATIVE ADJUSTED CONSOLIDATED EBITDA FOR 2011

(\$000'S Cdn)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Projected Monthly Adjusted Consolidated EBITDA	(255)	194	415	737	841	1,425	1,307	1,485	1,585	1,525	1,126	716
Projected Cumulative Adjusted Consolidated EBITDA	(255)	(62)	353	1,090	1,931	3,356	4,662	6,147	7,733	9,258	10,384	11,100
Permitted Negative Variance	150	300	450	600	750	1,000	1,250	1,250	1,250	1,250	1,250	1,250
Cumulative Adjusted Consolidated EBITDA (covenant per section 2.6(2))	(405)	(362)	(97)	490	1,181	2,356	3,412	4,897	6,483	8,008	9,134	9,850

**THIS SECOND AMENDING AGREEMENT** made as of the 1<sup>st</sup> day of November, 2011

**AMONG:**

**KRAUS INC.**

(hereinafter called the "Borrower"),

**OF THE FIRST PART**

- and -

**STRUDEX FIBRES LIMITED**

(hereinafter called the "Company"),

**OF THE SECOND PART**

- and -

**BANK OF MONTREAL**

as Lender

(hereinafter called the "Lender")

**OF THE THIRD PART**

**WHEREAS** Borrower, the Company and BMO Capital Corporation ("BMOCC") are parties to an amended and restated credit agreement dated as of November 23, 2010 as amended on March 7, 2011 (the "Credit Agreement");

**AND WHEREAS** BMOCC has assigned all of its right, title and interest in the Loan and the Credit Documents to the Lender;

**AND WHEREAS** the parties hereto wish to further amend the Credit Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the parties hereto agree to amend the Credit Agreement as provided herein:

#### **Section 1    General**

In this Second Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement. In the event of a conflict between the terms of this Second Amending Agreement and the Credit Agreement, the terms of this Second Amending Agreement shall govern.

#### **Section 2    To be Read with Credit Agreement**

This Second Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Second Amending Agreement otherwise requires, the Credit Agreement and this Second Amending Agreement shall be read together and shall have effect as if the provisions of the *Second Amending Agreement*

Credit Agreement and this Second Amending Agreement were contained in one agreement. The term "Agreement" when used in the Credit Agreement means the Credit Agreement as amended, supplemented or modified from time to time. Except as specifically amended by this Second Amending Agreement, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.

### **Section 3 Amendments**

#### **3.1 Definitions**

- (a) Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in their proper alphabetical order:

**"August 2011 Default"** means the Company's failure to maintain the minimum EBITDA as required pursuant to Section 6.04(d) of this Agreement.

**"Second Amending Agreement"** means the amending agreement dated November 1, 2011 among the Lender, the Borrower and the Company.

- (b) Section 6.04(d) of the Credit Agreement is hereby deleted in its entirety and replaced as follows:

**"(d) Minimum EBITDA.** On a cumulative basis for each calendar month in Financial Year 2011, the Company shall maintain a minimum Adjusted Consolidated EBITDA that is equal to or greater than the projected monthly cumulative Adjusted Consolidated EBITDA for each such month pursuant to the 2011 Business Plan as specified on Schedule A attached to the Second Amending Agreement, with permitted negative variance as follows: (i) January 2011: \$150,000; (ii) February 2011: \$300,000; (iii) March 2011: \$450,000; (iv) April 2011: \$600,000; (v) May 2011: \$750,000; (vi) June 2011: \$1,000,000; (vii) July 2011 and August 2011: \$1,250,000; (viii) September 2011 and October 2011: \$500,000; and (ix) November 2011: \$750,000."

### **Section 4 Reservation of Rights and Waiver**

- (a) **Amendment.** This Second Amending Agreement is limited as specified and the execution, delivery and effectiveness of this Second Amending Agreement shall not, except as expressly provided, operate as a modification, acceptance or waiver of any provision of the Credit Agreement or any Credit Document or any right, power or remedy of the Lender thereunder.
- (b) **Reservation of Rights.** Notwithstanding the foregoing or anything contained in this Second Amending Agreement to the contrary, the Lender expressly reserves the right to exercise any and all of its rights and remedies under the Credit Agreement, any Credit Document and applicable law in respect of any Default or Event of Default. The Lender hereby reserves the right to preserve and protect its interest in the property subject to the Lender's security and to take any action that the Lender



521

deems appropriate if circumstances indicate to the Lender that its security is in jeopardy.

- (c) **Waiver.** The Lender hereby waives the August 2011 Default.

#### **Section 5 Representations and Warranties**

In order to induce the Lender to enter into this Second Amending Agreement, the Borrower and the Company represent and warrant to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Article Five of the Credit Agreement continue to be true and correct as of the date hereof with reference to facts subsisting on such date except for those representations and warranties which speak to a specific date;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Second Amending Agreement by the Borrower and the Company. The Borrower and the Company have duly executed and delivered this Second Amending Agreement. This Second Amending Agreement is a legal, valid and binding obligation of the Borrower and the Company enforceable against each of them by the Lender in accordance with its terms; and
- (c) as of the date hereof, no Default or Event of Default exists other than the August 2011 Default.

#### **Section 6 Conditions Precedent**

This Second Amending Agreement shall not be effective until the Lender is satisfied that the following terms and conditions have been fulfilled:

- (a) this Second Amending Agreement executed by the Borrower, the Company and the Lender;
- (b) no Material Adverse Effect having occurred;
- (c) a certified copy of a fully executed waiver and amendment to the Senior Credit Agreement in form and substance reasonably satisfactory to the Lender;
- (d) written confirmation to the Lender from the Senior Agent on behalf of the Senior Lenders, consenting to the execution and delivery by the Borrower and the Company of this Second Amending Agreement;
- (e) delivery to the Lender of an acknowledgement and confirmation of each Grantor as to, *inter alia*, the continuing effectiveness of its guarantee and the Security delivered by it;

- (f) all legal and consulting fees, costs and disbursements (including all goods and services, sales and other taxes) incurred by the Lender (including, without limitation, those of McCarthy Tétrault LLP) in connection with the preparation, negotiation, completion, execution, delivery and review of this Second Amending Agreement shall have been paid in full;
- (g) other than the August 2011 Default which has been waived, no Default or Event of Default shall be in existence;
- (h) certified copies of resolutions authorizing the entry into this Second Amending Agreement from each of the Borrower and the Company; and
- (i) copies of such further and other documents as required by the Lender, acting reasonably.

#### **Section 7 Payment on Subordinate Debt**

The Borrower and the Company each hereby acknowledge that neither it nor any of its Restricted Subsidiaries is permitted to make (nor shall any such parties make) any payment of principal or interest in respect of the VTB Subordinated Debt or the Eckhardt Debt.

#### **Section 8 Release of Claims**

The Company and each Restricted Subsidiary each hereby covenants not to bring any action, application, petition, suit or other proceeding against the Lender, the Affiliates or any Consultants or any other advisors engaged by any of them, or their respective officers, directors, employees, agents, successors and assigns (the “Released Parties”) and hereby irrevocably and unconditionally release and forever discharge the Released Parties of and from all manner of actions, causes of action, suits, debts, liabilities, costs, claims, accountings and demands, in law, in equity or otherwise, which each of them may now have or might otherwise be entitled to make (collectively, the “Claims”) for or by any reason of any cause, matter or thing whatsoever including, without limitation, any Claims pursuant to, arising from or in connection with any matters relating to the affairs among the Lenders and the Company and each Restricted Subsidiary prior to the date hereof, whether in connection with (a) the Credit Agreement and Security Documents; (b) the enforcement of the Lender’s rights and remedies against the property, assets and undertaking of the Company and each Restricted Subsidiary; or (c) otherwise, save and except for any fraud, wilful misconduct or gross negligence. The Company and the Restricted Subsidiaries each further undertake, covenant and agree to make no claim and to take no action or proceeding whatsoever against any person not a party to the release granted herein that could result in any claim over against the Released Parties, in respect of any and all matters or things released in this release, or for any form of contributions, indemnity or other relief whether arising at law, equity or under the provisions of the *Negligence Act* R.S.O. 1990 c. N-1.

#### **Section 9 Continuance of Credit Agreement and Security**

The Credit Agreement, as changed, altered, amended or modified by this Second Amending Agreement, shall be and continue in full force and effect and is hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as

*Second Amending Agreement*

specifically provided for herein. It is agreed and confirmed that after giving effect to this Second Amending Agreement that the Security as it relates to the Borrower secures, *inter alia*, the payment of all of the obligations of the Borrower including, without limitation, the obligations arising under the Credit Agreement, as amended by the terms of this Second Amending Agreement.

**Section 10 Further Assurances**

Each of the Borrower, the Company and the Restricted Subsidiaries shall provide such further or additional documents and information including, without limitation, financing statements and financing change statements, whether provided for in the Credit Documents or otherwise, as the Lender may require.

**Section 11 Counterparts**

This Second Amending Agreement may be executed in any number of separate counterparts (whether by facsimile, pdf or otherwise), each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 12 Governing Law**

This Second Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

[Remainder of Page Intentionally Left Blank]

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

KRAUS INC.

By: A. Eckhardt

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

STRUDEX FIBRES LIMITED

By: A. Eckhardt

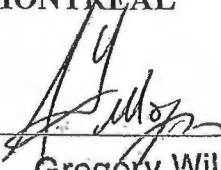
By: \_\_\_\_\_

525

**BANK OF MONTREAL**

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

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

  
**Gregory William Fedoryn**  
Senior Account Manager



# SCHEDULE A

## MINIMUM CUMULATIVE ADJUSTED CONSOLIDATED EBITDA FOR 2011

(\$000'S Cdn)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Projected Monthly Adjusted Consolidated EBITDA	(255)	194	415	737	841	1,425	1,307	1,485	615	572	387	716
Projected Cumulative Adjusted Consolidated EBITDA	(255)	(62)	353	1,090	1,931	3,356	4,662	6,147	4,599	5,171	5,557	11,100
Permitted Negative Variance	150	300	450	600	750	1,000	1,250	1,250	500	500	750	1,250
Cumulative Adjusted Consolidated EBITDA (covenant per section 2.6(2))	(405)	(362)	(97)	490	1,181	2,356	3,412	4,897	4,099	4,671	4,807	9,850

- Ward, R. D., & B. A. Schmitt. 1999. The evolution of the concept of a species. *Annual Review of Ecology and Systematics* 30: 399–420.
- Ward, R. D., & B. A. Schmitt. 2002. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 35: 1–50.
- Ward, R. D., & B. A. Schmitt. 2003. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 36: 1–50.
- Ward, R. D., & B. A. Schmitt. 2004. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 37: 1–50.
- Ward, R. D., & B. A. Schmitt. 2005. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 38: 1–50.
- Ward, R. D., & B. A. Schmitt. 2006. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 39: 1–50.
- Ward, R. D., & B. A. Schmitt. 2007. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 40: 1–50.
- Ward, R. D., & B. A. Schmitt. 2008. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 41: 1–50.
- Ward, R. D., & B. A. Schmitt. 2009. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 42: 1–50.
- Ward, R. D., & B. A. Schmitt. 2010. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 43: 1–50.
- Ward, R. D., & B. A. Schmitt. 2011. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 44: 1–50.
- Ward, R. D., & B. A. Schmitt. 2012. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 45: 1–50.
- Ward, R. D., & B. A. Schmitt. 2013. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 46: 1–50.
- Ward, R. D., & B. A. Schmitt. 2014. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 47: 1–50.
- Ward, R. D., & B. A. Schmitt. 2015. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 48: 1–50.
- Ward, R. D., & B. A. Schmitt. 2016. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 49: 1–50.
- Ward, R. D., & B. A. Schmitt. 2017. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 50: 1–50.
- Ward, R. D., & B. A. Schmitt. 2018. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 51: 1–50.
- Ward, R. D., & B. A. Schmitt. 2019. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 52: 1–50.
- Ward, R. D., & B. A. Schmitt. 2020. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 53: 1–50.
- Ward, R. D., & B. A. Schmitt. 2021. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 54: 1–50.
- Ward, R. D., & B. A. Schmitt. 2022. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 55: 1–50.
- Ward, R. D., & B. A. Schmitt. 2023. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 56: 1–50.
- Ward, R. D., & B. A. Schmitt. 2024. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 57: 1–50.
- Ward, R. D., & B. A. Schmitt. 2025. The evolution of the concept of a species: A review of the historical development of the concept of a species. *Journal of the History of Biology* 58: 1–50.

Received for consideration, July 1, 2004; accepted for publication, November 1, 2004.

This paper is part of a special issue of *Journal of the History of Biology* devoted to the history of the concept of a species. The special issue is edited by R. D. Ward and B. A. Schmitt.

Corresponding author: R. D. Ward, Department of Biology, University of California, San Diego, La Jolla, CA 92037. E-mail: ward@ucsd.edu

© 2005 The Authors  
Journal compilation © 2005 Society for the History of Biology

This article is a U.S. Government work and, as such, is in the public domain in the United States of America.

Published by the Society for the History of Biology, 1000 North 17th Street, Suite 100, Lawrence, KS 66044

For more information on this journal, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

For more information on the Society for the History of Biology, please visit the Society for the History of Biology website at <http://www.shb-online.org>

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between BMO Capital Corporation (the "Assignor") and Bank of Montreal (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells, transfers, conveys and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents, instruments, notes, certificates and legal opinions delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any Letters of Credit and guarantees included in such facilities) (as each such document is amended, restated, supplemented or otherwise modified from time to time and they are collectively referred to as the "Documents") and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: BMO Capital Corporation
2. Assignee: Bank of Montreal, an Affiliate of the Assignor
3. Amount Assigned: \$10,000,000 in principal plus interest
4. Credit Agreement: means the credit agreement dated as of July 24, 2007 among, *inter alios*, Kraus Carpet Mills Limited (predecessor to Kraus Inc.), as borrower, Strudex Fibres Limited, as guarantor, and BMO Capital Corporation.
5. Effective Date: November 1, 2011

The terms set forth in this Assignment and Assumption are hereby agreed to:

BMO CAPITAL CORPORATION

By: 

Name: STEVE SOMERVILLE

Title: PRESIDENT

BANK OF MONTREAL

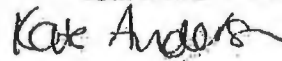
By: 

Name:

JIM KELSEY  
SENIOR VICE-PRESIDENT

Title:

CORPORATE FINANCE DIVISION



NAME: KATHARINE M. ANDERSON

TITLE: ASST. CORPORATE SECRETARY  
BANK OF MONTREAL

## ANNEX 1

## 1. DEFINITIONS

Whenever used in this Assignment and Assumption, "Assignment and Assumption" means this assignment and transfer agreement, including all schedules, annexes and related acknowledgements, consents and confirmations, and all amendments or restatements, as permitted, and references to "Section" mean the specified Section of this Assignment and Assumption.

## 2. CERTAIN RULES OF INTERPRETATION

In this Assignment and Assumption:

- A. **Governing Law** – This Assignment and Assumption is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- B. **Headings** – Headings of Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Assignment and Assumption.
- C. **Including** – Where the word "including" or "includes" is used in this Assignment and Assumption, it means "including (or includes) without limitation".
- D. **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- E. **Statutory references** – A reference to a statute includes all regulations and rules made pursuant to such statute.

## 3. ASSUMPTION OF OBLIGATIONS PURSUANT TO DOCUMENTS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Assignee, the Assignee agrees to be bound by each and every one of the Documents as if it were an original party thereto. The foregoing assumption and agreement is also made for the benefit of the parties to the Documents other than the Assignor.

## 4. FURTHER ASSURANCES

The Assignor and the Assignee shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Assignment and Assumption and each signatory hereto shall provide such further documents or instruments to any other signatory hereto as may be reasonably necessary or desirable to effect the purpose of this Assignment and Assumption and carry out its provisions.

## 5. PRECONDITIONS TO TRANSFER

This Assignment and Assumption shall not constitute an assignment or attempted assignment of any Document which is not assignable without the consent or approval of any third party and such consent or

approval has not been obtained. Such Documents shall be held in trust for the Assignee and performed by the Assignee in the name of the Assignor, and all benefits derived thereunder shall be for the account of the Assignee. The Assignee shall indemnify and save harmless the Assignor from and against all liabilities of every nature and kind arising out of or in any way connected with the performance by the Assignee in the name of the Assignor of any such Documents not assigned to the Assignee.

## **6. OTHER COVENANTS OF THE PARTIES**

### **6.1 Grant of Power of Attorney**

- A. Effective as of the date of this Assignment and Assumption, the Assignor irrevocably constitutes and appoints the Assignee and any director or officer of the Assignee, its successors and assigns, as the true and lawful attorney of the Assignor for and in the name of or otherwise on behalf of the Assignor with full power of substitution to execute all deeds, documents, instruments and agreements and to perform all acts, matters and things whatsoever necessary or desirable to effect the purpose of this Assignment and Assumption and for any other purposes which may arise subsequent to the dissolution of the Assignor.
- B. The power of attorney set forth above is granted by the Assignor to the Assignee in contemplation of the liquidation and dissolution of the Assignor, and such power of attorney being coupled with an interest shall not be revoked by the dissolution, liquidation or other termination of the existence of the Assignor or for any other reason.

## **7. GENERAL**

### **7.1 Enurement**

This Assignment and Assumption enures to the benefit of and is binding upon the signatories hereto and their respective successors (including any successor by reason of amalgamation of any signatory) and permitted assigns.

### **7.2 Third Parties**

This Assignment and Assumption is not intended to and shall not be construed to create any rights in any persons other than the Assignor and the Assignee, and no person shall assert any rights as a third-party beneficiary hereunder.

### **7.3 Amendment**

No amendment, supplement or modification of this Assignment and Assumption is binding unless executed in writing by the party to be bound thereby.

### **7.4 Execution and Delivery**

This Assignment and Assumption may be executed by the signatories hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles together constitute one and the same agreement.



## ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF SECURITY

TO: BANK OF MONTREAL

AND TO: BMO CAPITAL CORPORATION

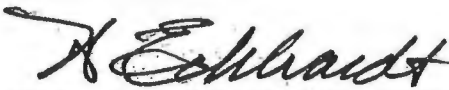
The undersigned hereby acknowledges and consents to the foregoing assignment by the Assignor to the Assignee.

The undersigned hereby confirms to and in favour of the Assignee and agrees that it continues to be bound by the provisions of all security documents given by it in connection with the Loan (as each such security document may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time) and that each such security document remains in full force and effect, continues to be binding upon it and continues to secure payment of all present and future, direct and indirect, absolute or contingent, indebtedness, liabilities and obligations owing by it from time to time.

The undersigned agrees to execute and deliver all such further agreements, documents and assurances at any time and from time to time as the Assignee may consider necessary or desirable in connection with the foregoing.

DATED as of the 1<sup>st</sup> day of November, 2011.

KRAUS INC.

By:   
Name: Harold Eckhardt  
Title: chair

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

## ACKNOWLEDGEMENT, CONSENT AND CONFIRMATION OF GUARANTEE AND SECURITY

TO: BANK OF MONTREAL

AND TO: BMO CAPITAL CORPORATION

Each undersigned hereby acknowledges and consents to the foregoing assignment by the Assignor to the Assignee.

Each undersigned hereby acknowledges and confirms to and in favour of the Assignee that all guarantees given by it in connection with the Loan shall continue to stand as guarantees of all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, now or at any time and from time to time hereafter due or owing by the Borrower.

Each undersigned hereby confirms to and in favour of the Assignee and agrees that it continues to be bound by the provisions of all security documents given by it (as each such security document may be amended, restated, renewed, replaced, supplemented or otherwise modified from time to time) and that each such security document remains in full force and effect, continues to be binding upon it and continues to secure payment of all present and future, direct and indirect, absolute or contingent, indebtedness, liabilities and obligations owing by it from time to time including, without limitation, under the aforementioned guarantees and any other guarantees now or hereafter delivered by it in connection with the Loan.

Each undersigned agrees to execute and deliver all such further agreements, documents and assurances at any time and from time to time as the Assignee may consider necessary or desirable in connection with the foregoing.

DATED as of the 1<sup>st</sup> day of November, 2011.

KRAUS USA, INC.

By: 

Name: Harold Eckhardt

Title: chair

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

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

Title: \_\_\_\_\_

## STRUDEX FIBRES LIMITED

By: H. Eckhardt  
Name: Harold Eckhardt  
Title: chair

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

## ANNELEEN ECKHARDT HOLDINGS LIMITED

By: H. Eckhardt  
Name: Harold Eckhardt  
Title: president

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

## KRAUS CANADA INC.

By: H. Eckhardt  
Name: Harold Eckhardt  
Title: chair

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

## 538626 B.C. LTD.

By: H. Eckhardt  
Name: Harold Eckhardt  
Title: chair

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

534

## BARRETT CARPET MILLS, INC.

By: H. EckhardtName: Harold EckhardtTitle: Director

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

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

Title: \_\_\_\_\_

## NORTHSTATE CARPET MILLS PTY LTD

By: H. EckhardtName: Harold EckhardtTitle: chair

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

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

Title: \_\_\_\_\_

Anne Eckhardt

ANNELEEN ECKHARDT

Wongin

WITNESS

H. Eckhardt

HAROLD ECKHARDT

Wongin

WITNESS

The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. This involves a thorough review of the existing literature and a critical analysis of the data. The second part of the paper presents the results of the experiments, which show that the proposed method is effective in improving the performance of the system. The third part of the paper discusses the implications of the findings and suggests directions for future research.

The results of the experiments are presented in Table 1. The table shows that the proposed method achieves a higher accuracy than the baseline method. This is due to the fact that the proposed method is able to capture the underlying patterns in the data more effectively. The results also show that the proposed method is robust to noise and outliers, which is a significant advantage over the baseline method. The implications of these findings are that the proposed method can be used to improve the performance of the system in a wide range of applications.

In conclusion, the paper has shown that the proposed method is effective in improving the performance of the system. The results of the experiments are promising and suggest that the proposed method can be used to improve the performance of the system in a wide range of applications. The implications of these findings are that the proposed method can be used to improve the performance of the system in a wide range of applications.

**THIS THIRD AMENDING AGREEMENT** made as of the 15<sup>th</sup> day of December, 2011

**AMONG:**

**KRAUS INC.**

(hereinafter called the "**Borrower**"),

**OF THE FIRST PART**

- and -

**STRUDEX FIBRES LIMITED**

(hereinafter called the "**Company**"),

**OF THE SECOND PART**

- and -

**BANK OF MONTREAL**

as Lender

(hereinafter called the "**Lender**")

**OF THE THIRD PART**

**WHEREAS** Borrower, the Company and BMO Capital Corporation ("**BMOCC**") are parties to an amended and restated credit agreement dated as of November 23, 2010 as amended on March 7, 2011 and November 1, 2011 (the "**Credit Agreement**");

**AND WHEREAS** BMOCC has assigned all of its right, title and interest in the Loan and the Credit Documents to the Lender;

**AND WHEREAS** the parties hereto wish to further amend the Credit Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the parties hereto agree to amend the Credit Agreement as provided herein:

#### **Section 1    General**

In this Third Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement. In the event of a conflict between the terms of this Third Amending Agreement and the Credit Agreement, the terms of this Third Amending Agreement shall govern.

#### **Section 2    To be Read with Credit Agreement**

This Third Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Third Amending Agreement otherwise requires, the Credit Agreement and this Third Amending Agreement shall be read together and shall have effect as if the provisions of the Credit



Agreement and this Third Amending Agreement were contained in one agreement. The term "Agreement" when used in the Credit Agreement means the Credit Agreement as amended, supplemented or modified from time to time. Except as specifically amended by this Third Amending Agreement, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.

### Section 3 Amendments

#### 3.1 Definitions

- (a) Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in their proper alphabetical order:

**"Third Amending Agreement"** means the amending agreement dated December 15, 2011 among the Lender, the Borrower and the Company.

**"Fifth Closing Date"** means December 15, 2011."

- (b) Section 6.04 of the Credit Agreement is hereby amended by adding a new subsection (e) as follows:

**"(e) Temporary Suspension of Certain Financial Covenants.** The Lender and the Borrower agree that the financial covenants provided for in Section 6.04(a), Section 6.04(b) and Section 6.04(c) of this Agreement are, commencing on the Fifth Closing Date, temporarily suspended with such suspension ending on January 30, 2012. For certainty, each of the foregoing financial covenants will cease to be suspended and shall thereafter immediately apply as at January 31, 2012 and for all times thereafter as provided for in such subsections."

- (c) Section 6.04(d) of the Credit Agreement is hereby deleted in its entirety and replaced as follows:

**"(d) Minimum EBITDA.** On a cumulative basis for each calendar month in Financial Year 2011, the Company shall maintain a minimum Adjusted Consolidated EBITDA that is equal to or greater than the projected monthly cumulative Adjusted Consolidated EBITDA for each such month pursuant to the 2011 Business Plan as specified on Schedule A attached to the Third Amending Agreement, with permitted negative variance as follows: (i) January 2011: \$150,000; (ii) February 2011: \$300,000; (iii) March 2011: \$450,000; (iv) April 2011: \$600,000; (v) May 2011: \$750,000; (vi) June 2011: \$1,000,000; (vii) July 2011 and August 2011: \$1,250,000; (viii) September 2011 and October 2011: \$500,000; and (ix) November 2011 and December 31, 2011: \$750,000."

### Section 4 Reservation of Rights and Waiver

- (a) **Amendment.** This Third Amending Agreement is limited as specified and the execution, delivery and effectiveness of this Third Amending Agreement shall not, except as expressly provided, operate as a modification, acceptance or waiver of any

provision of the Credit Agreement or any Credit Document or any right, power or remedy of the Lender thereunder.

- (b) **Reservation of Rights.** Notwithstanding the foregoing or anything contained in this Third Amending Agreement to the contrary, the Lender expressly reserves the right to exercise any and all of its rights and remedies under the Credit Agreement, any Credit Document and applicable law in respect of any Default or Event of Default. The Lender hereby reserves the right to preserve and protect its interest in the property subject to the Lender's security and to take any action that the Lender deems appropriate if circumstances indicate to the Lender that its security is in jeopardy.

#### **Section 5 Representations and Warranties**

In order to induce the Lender to enter into this Third Amending Agreement, the Borrower and the Company represent and warrant to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Article Five of the Credit Agreement continue to be true and correct as of the date hereof with reference to facts subsisting on such date except for those representations and warranties which speak to a specific date;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Third Amending Agreement by the Borrower and the Company. The Borrower and the Company have duly executed and delivered this Third Amending Agreement. This Third Amending Agreement is a legal, valid and binding obligation of the Borrower and the Company enforceable against each of them by the Lender in accordance with its terms; and
- (c) as of the date hereof, no Default or Event of Default exists.

#### **Section 6 Conditions Precedent**

This Third Amending Agreement shall not be effective until the Lender is satisfied that the following terms and conditions have been fulfilled:

- (a) this Third Amending Agreement executed by the Borrower, the Company and the Lender;
- (b) no Material Adverse Effect having occurred;
- (c) a certified copy of a fully executed waiver and amendment to the Senior Credit Agreement in form and substance reasonably satisfactory to the Lender;
- (d) written confirmation to the Lender from the Senior Agent on behalf of the Senior Lenders, consenting to the execution and delivery by the Borrower and the Company of this Third Amending Agreement;

- (e) delivery to the Lender of an acknowledgement and confirmation of each Grantor as to, *inter alia*, the continuing effectiveness of its guarantee and the Security delivered by it;
- (f) all legal and consulting fees, costs and disbursements (including all goods and services, sales and other taxes) incurred by the Lender (including, without limitation, those of McCarthy Tétrault LLP) in connection with the preparation, negotiation, completion, execution, delivery and review of this Third Amending Agreement shall have been paid in full;
- (g) no Default or Event of Default shall be in existence;
- (h) certified copies of resolutions authorizing the entry into this Third Amending Agreement from each of the Borrower and the Company; and
- (i) copies of such further and other documents as required by the Lender, acting reasonably.

#### **Section 7 Payment on Subordinate Debt**

The Borrower and the Company each hereby acknowledge that neither it nor any of its Restricted Subsidiaries is permitted to make (nor shall any such parties make) any payment of principal or interest in respect of the VTB Subordinated Debt or the Eckhardt Debt.

#### **Section 8 Release of Claims**

The Company and each Restricted Subsidiary each hereby covenants not to bring any action, application, petition, suit or other proceeding against the Lender, the Affiliates or any Consultants or any other advisors engaged by any of them, or their respective officers, directors, employees, agents, successors and assigns (the "**Released Parties**") and hereby irrevocably and unconditionally release and forever discharge the Released Parties of and from all manner of actions, causes of action, suits, debts, liabilities, costs, claims, accountings and demands, in law, in equity or otherwise, which each of them may now have or might otherwise be entitled to make (collectively, the "**Claims**") for or by any reason of any cause, matter or thing whatsoever including, without limitation, any Claims pursuant to, arising from or in connection with any matters relating to the affairs among the Lenders and the Company and each Restricted Subsidiary prior to the date hereof, whether in connection with (a) the Credit Agreement and Security Documents; (b) the enforcement of the Lender's rights and remedies against the property, assets and undertaking of the Company and each Restricted Subsidiary; or (c) otherwise, save and except for any fraud, wilful misconduct or gross negligence. The Company and the Restricted Subsidiaries each further undertake, covenant and agree to make no claim and to take no action or proceeding whatsoever against any person not a party to the release granted herein that could result in any claim over against the Released Parties, in respect of any and all matters or things released in this release, or for any form of contributions, indemnity or other relief whether arising at law, equity or under the provisions of the *Negligence Act* R.S.O. 1990 c. N-1.

**Section 9 Continuance of Credit Agreement and Security**

The Credit Agreement, as changed, altered, amended or modified by this Third Amending Agreement, shall be and continue in full force and effect and is hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein. It is agreed and confirmed that after giving effect to this Third Amending Agreement that the Security as it relates to the Borrower secures, *inter alia*, the payment of all of the obligations of the Borrower including, without limitation, the obligations arising under the Credit Agreement, as amended by the terms of this Third Amending Agreement.

**Section 10 Default Under Senior Credit Agreement**

The parties hereto acknowledge and agree that the occurrence of a default under the Senior Credit Agreement caused by the August 31, 2011 Financial Covenant Event of Default (as defined in the limited purpose waiver and amendment agreement dated as of the date hereof among, *inter alia*, the Borrower, the Company, the Senior Agent and the Senior Lenders) shall immediately result in a Default under the Credit Agreement.

**Section 11 Further Assurances**

Each of the Borrower, the Company and the Restricted Subsidiaries shall provide such further or additional documents and information including, without limitation, financing statements and financing change statements, whether provided for in the Credit Documents or otherwise, as the Lender may require.

**Section 12 Counterparts**

This Third Amending Agreement may be executed in any number of separate counterparts (whether by facsimile, pdf or otherwise), each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

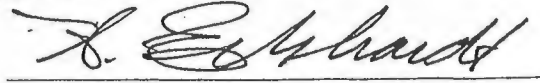
**Section 13 Governing Law**

This Third Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

[Remainder of Page Intentionally Left Blank]

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

KRAUS INC.

By: 

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

STRUDEX FIBRES LIMITED

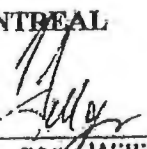
By: 

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

**BANK OF MONTREAL**

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

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

  
Sergey William Fedoryn  
Sergey Account Manager



# SCHEDULE A

## MINIMUM CUMULATIVE ADJUSTED CONSOLIDATED EBITDA FOR 2011

542

(\$000'S Cdn)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Projected Monthly Adjusted Consolidated EBITDA	(255)	194	415	737	841	1,425	1,307	1,485	615	572	387	(24)
Projected Cumulative Adjusted Consolidated EBITDA	(255)	(62)	353	1,090	1,931	3,356	4,662	6,147	4,599	5,171	5,557	5,533
Permitted Negative Variance	150	300	450	600	750	1,000	1,250	1,250	500	500	750	750
Cumulative Adjusted Consolidated EBITDA (covenant per section 2.6(2))	(405)	(362)	(97)	490	1,181	2,356	3,412	4,897	4,099	4,671	4,807	4,783

the 1990s, the number of people with a mental health problem has increased by 50% (Mental Health Foundation, 2000).

There is a growing awareness of the need to address the needs of people with mental health problems, and the importance of providing them with appropriate services. However, there is a significant gap between the current needs of people with mental health problems and the services available to them. This gap is due to a number of factors, including a lack of resources, a lack of training for health professionals, and a lack of awareness of the needs of people with mental health problems. This paper will discuss the current needs of people with mental health problems and the services available to them, and will propose a number of ways in which the gap between the current needs and the services available can be closed.

The first factor contributing to the gap between the current needs of people with mental health problems and the services available to them is a lack of resources. There is a significant shortage of mental health professionals, and the services available to people with mental health problems are often limited in scope and quality. This is due to a number of factors, including a lack of funding, a lack of training for health professionals, and a lack of awareness of the needs of people with mental health problems.

The second factor contributing to the gap between the current needs of people with mental health problems and the services available to them is a lack of training for health professionals. Many health professionals do not have the necessary training to provide appropriate services to people with mental health problems. This is due to a number of factors, including a lack of funding for training, a lack of training opportunities, and a lack of awareness of the needs of people with mental health problems.

The third factor contributing to the gap between the current needs of people with mental health problems and the services available to them is a lack of awareness of the needs of people with mental health problems. Many health professionals and the general public do not have a sufficient understanding of the needs of people with mental health problems. This is due to a number of factors, including a lack of information, a lack of training for health professionals, and a lack of awareness of the needs of people with mental health problems.

There are a number of ways in which the gap between the current needs of people with mental health problems and the services available to them can be closed. These include increasing the number of mental health professionals, providing training for health professionals, and increasing awareness of the needs of people with mental health problems. This paper will discuss these and other ways in which the gap can be closed.

One way to increase the number of mental health professionals is to increase the number of people who are trained to become mental health professionals. This can be done by increasing the number of training places available, and by providing training opportunities for people who are interested in becoming mental health professionals. This can be done by increasing the number of training places available, and by providing training opportunities for people who are interested in becoming mental health professionals.

Another way to increase the number of mental health professionals is to provide training for health professionals who are already working in the field. This can be done by providing training opportunities for health professionals who are interested in becoming mental health professionals. This can be done by providing training opportunities for health professionals who are interested in becoming mental health professionals.

THIS FOURTH AMENDING AGREEMENT made as of the 31<sup>st</sup> day of January, 2012

AMONG:

KRAUS INC.

(hereinafter called the "Borrower"),

- and -

STRUDEX FIBRES LIMITED

(hereinafter called the "Company")

- and -

BANK OF MONTREAL  
as Lender

(hereinafter called the "Lender")

*add as  
#10(d)*

RST PART

COND PART

#### OF THE THIRD PART

WHEREAS Borrower, the Company and BMO Capital Corporation ("BMOCC") are parties to an amended and restated credit agreement dated as of November 23, 2010 as amended on March 7, 2011, November 1, 2011 and December 15, 2011 (the "Credit Agreement");

AND WHEREAS BMOCC has assigned all of its right, title and interest in the Loan and the Credit Documents to the Lender;

AND WHEREAS the parties hereto wish to further amend the Credit Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the parties hereto agree to amend the Credit Agreement as provided herein:

#### Section 1 General

In this Fourth Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement. In the event of a conflict between the terms of this Fourth Amending Agreement and the Credit Agreement, the terms of this Fourth Amending Agreement shall govern.

#### Section 2 To be Read with Credit Agreement

This Fourth Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Fourth Amending Agreement otherwise requires, the Credit Agreement and this Fourth Amending Agreement shall be read together and shall have effect as if the provisions of the

Credit Agreement and this Fourth Amending Agreement were contained in one agreement. The term "Agreement" when used in the Credit Agreement means the Credit Agreement as amended, supplemented or modified from time to time. Except as specifically amended by this Fourth Amending Agreement, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed.

### Section 3 Amendments

#### 3.1 Definitions

- (a) Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in their proper alphabetical order:

"**Fourth Amending Agreement**" means the amending agreement dated January 31, 2012 among the Lender, the Borrower and the Company.

"**January 2012 Limited Purpose Waiver**" means the limited purpose waiver and amendment agreement dated as of January 31, 2012 among, *inter alia*, the Company, the Borrower and National Bank of Canada as administrative agent.

"**Sixth Closing Date**" means January 31, 2012."

- (b) Section 6.04 of the Credit Agreement is hereby amended by adding a new subsection (e) as follows:

"(e) **Temporary Suspension of Certain Financial Covenants.** The Lender and the Borrower agree that the financial covenants provided for in Section 6.04(a), Section 6.04(b) and Section 6.04(c) of this Agreement are, commencing on the Sixth Closing Date, temporarily suspended with such suspension ending on February 29, 2012. For certainty, each of the foregoing financial covenants will cease to be suspended and shall thereafter immediately apply as at March 1, 2012 and for all times thereafter as provided for in such subsections."

- (c) Section 6.04(d) of the Credit Agreement is hereby deleted in its entirety and replaced as follows:

"(d) **Minimum EBITDA.** On a cumulative basis for each calendar month in the first Fiscal Quarter of Financial Year 2012, the Company shall maintain a minimum Adjusted Consolidated EBITDA that is equal to or greater than the projected monthly cumulative Adjusted Consolidated EBITDA for each such month as specified on Schedule A attached to the Fourth Amending Agreement, with permitted negative variance as follows: (i) January 2012: \$350,000; (ii) February 2012: \$500,000; and (iii) March 2012: \$600,000."

### Section 4 Reservation of Rights and Waiver

- (a) **Amendment.** This Fourth Amending Agreement is limited as specified and the execution, delivery and effectiveness of this Fourth Amending Agreement shall not,

except as expressly provided, operate as a modification, acceptance or waiver of any provision of the Credit Agreement or any Credit Document or any right, power or remedy of the Lender thereunder.

- (b) **Reservation of Rights.** Notwithstanding the foregoing or anything contained in this Fourth Amending Agreement to the contrary, the Lender expressly reserves the right to exercise any and all of its rights and remedies under the Credit Agreement, any Credit Document and applicable law in respect of any Default or Event of Default. The Lender hereby reserves the right to preserve and protect its interest in the property subject to the Lender's security and to take any action that the Lender deems appropriate if circumstances indicate to the Lender that its security is in jeopardy.

#### **Section 5   Representations and Warranties**

In order to induce the Lender to enter into this Fourth Amending Agreement, the Borrower and the Company represent and warrant to the Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

- (a) the representations and warranties set forth in Article Five of the Credit Agreement continue to be true and correct as of the date hereof with reference to facts subsisting on such date except for those representations and warranties which speak to a specific date;
- (b) all necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of this Fourth Amending Agreement by the Borrower and the Company. The Borrower and the Company have duly executed and delivered this Fourth Amending Agreement. This Fourth Amending Agreement is a legal, valid and binding obligation of the Borrower and the Company enforceable against each of them by the Lender in accordance with its terms; and
- (c) as of the date hereof, no Default or Event of Default exists.

#### **Section 6   Covenant**

The Company and the Borrower hereby covenant to provide from time to time such information and documentation requested by the Lender with respect to each of the matters pursuant to which the Company has covenanted in Section 8 of the January 2012 Limited Purpose Waiver.

#### **Section 7   Conditions Precedent**

This Fourth Amending Agreement shall not be effective until the Lender is satisfied that the following terms and conditions have been fulfilled:

- (a) this Fourth Amending Agreement executed by the Borrower, the Company and the Lender;
- (b) no Material Adverse Effect having occurred;

- (c) a certified copy of a fully executed waiver and amendment to the Senior Credit Agreement in form and substance reasonably satisfactory to the Lender;
- (d) written confirmation to the Lender from the Senior Agent on behalf of the Senior Lenders, consenting to the execution and delivery by the Borrower and the Company of this Fourth Amending Agreement;
- (e) delivery to the Lender of an acknowledgement and confirmation of each Grantor as to, *inter alia*, the continuing effectiveness of its guarantee and the Security delivered by it;
- (f) all legal and consulting fees, costs and disbursements (including all goods and services, sales and other taxes) incurred by the Lender (including, without limitation, those of McCarthy Tétrault LLP) in connection with the preparation, negotiation, completion, execution, delivery and review of this Fourth Amending Agreement shall have been paid in full;
- (g) no Default or Event of Default shall be in existence;
- (h) certified copies of resolutions authorizing the entry into this Fourth Amending Agreement from each of the Borrower and the Company; and
- (i) copies of such further and other documents as required by the Lender, acting reasonably.

#### **Section 8    Payment on Subordinate Debt**

The Borrower and the Company each hereby acknowledge that neither it nor any of its Restricted Subsidiaries is permitted to make (nor shall any such parties make) any payment of principal or interest in respect of the VTB Subordinated Debt or the Eckhardt Debt.

#### **Section 9    Release of Claims**

The Company and each Restricted Subsidiary each hereby covenants not to bring any action, application, petition, suit or other proceeding against the Lender, the Affiliates or any Consultants or any other advisors engaged by any of them, or their respective officers, directors, employees, agents, successors and assigns (the "**Released Parties**") and hereby irrevocably and unconditionally release and forever discharge the Released Parties of and from all manner of actions, causes of action, suits, debts, liabilities, costs, claims, accountings and demands, in law, in equity or otherwise, which each of them may now have or might otherwise be entitled to make (collectively, the "**Claims**") for or by any reason of any cause, matter or thing whatsoever including, without limitation, any Claims pursuant to, arising from or in connection with any matters relating to the affairs among the Lenders and the Company and each Restricted Subsidiary prior to the date hereof, whether in connection with (a) the Credit Agreement and Security Documents; (b) the enforcement of the Lender's rights and remedies against the property, assets and undertaking of the Company and each Restricted Subsidiary; or (c) otherwise, save and except for any fraud, wilful misconduct or gross negligence. The Company and the Restricted Subsidiaries each further undertake, covenant and agree to make no claim and to take no action or proceeding whatsoever against any person not a party to the release



granted herein that could result in any claim over against the Released Parties, in respect of any and all matters or things released in this release, or for any form of contributions, indemnity or other relief whether arising at law, equity or under the provisions of the *Negligence Act* R.S.O. 1990 c. N-1.

**Section 10 Further Assurances Relating to Security**

If the Lender determines that a Credit Document or a Security Document (or a transaction related to a Credit Document or Security Document) is or contains a security interest, each Grantor agrees (at the cost of the Borrower) to promptly do anything (including amending any Credit Document or Security Document or executing any new document) which the Lender reasonably require for the purposes of: (i) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective, (ii) enabling the Lender to apply for registration, or give any notification, in connection with the security interest so that the security interest has the priority required by the Lender, or (iii) enabling the Lender to exercise rights in connection with the security interest.

**Section 11 Continuance of Credit Agreement and Security**

The Credit Agreement, as changed, altered, amended or modified by this Fourth Amending Agreement, shall be and continue in full force and effect and is hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein. It is agreed and confirmed that after giving effect to this Fourth Amending Agreement that the Security as it relates to the Borrower secures, *inter alia*, the payment of all of the obligations of the Borrower including, without limitation, the obligations arising under the Credit Agreement, as amended by the terms of this Fourth Amending Agreement.

**Section 12 Default Under Senior Credit Agreement**

The parties hereto acknowledge and agree that the occurrence of a default under the Senior Credit Agreement caused by the August 31, 2011 Financial Covenant Event of Default (as defined in the January 2012 Limited Purpose Waiver) shall immediately result in an Event of Default under the Credit Agreement without the requirement of any further notice or action.

**Section 13 Further Assurances**

Each of the Borrower, the Company and the Restricted Subsidiaries shall provide such further or additional documents and information including, without limitation, financing statements and financing change statements, whether provided for in the Credit Documents or otherwise, as the Lender may require.

**Section 14 Counterparts**

This Fourth Amending Agreement may be executed in any number of separate counterparts (whether by facsimile, pdf or otherwise), each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 15 Governing Law**

This Fourth Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

[Remainder of Page Intentionally Left Blank]

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

KRAUS INC.

By: J. Ehrhardt

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

STRUDEX FIBRES LIMITED

By: J. Ehrhardt

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

BANK OF MONTREAL

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

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

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

**KRAUS INC.**

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

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

**STRUDEX FIBRES LIMITED**

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

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

**BANK OF MONTREAL**

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

By: \_\_\_\_\_  
Gregory William Fedoryn  
Senior Account Manager

**MINIMUM CUMULATIVE ADJUSTED CONSOLIDATED EBITDA**  
**(for January 1, 2012 through March 31 2012)**

(000'S Cdn)	January	February	March
Projected Monthly Adjusted Consolidated EBITDA	(429)	(8)	1,111
Projected Cumulative Adjusted Consolidated EBITDA	(429)	(437)	674
Permitted Negative Variance	350	500	600
Cumulative Adjusted Consolidated EBITDA	(779)	(937)	74

Dated as of September 30, 2010

VIA EMAIL

Strudex Fibres Limited

-and-

Each of the Borrowers and Guaranteeing Parties under the Senior Credit Agreement (defined below)

-and-

Anneleen Eckhardt Holdings Limited

65 Northfield Dr. W.

Waterloo, ON N2J 4J4

Attention: Walter Eckhardt and Murray Mackey

Dear Sirs:

**Event of Default as at December 31, 2009 pursuant to the terms of the Credit and Guarantee Agreement dated as of June 28, 2007, as amended by Credit and Guarantee Amending Agreement No. 1 dated as of August 30, 2007, Credit and Guarantee Amending Agreement No. 2 dated as of January 26, 2009 ("Amendment No. 2), Credit and Guarantee Amending Agreement No. 3 dated as of May 21, 2009 and Forbearance Agreements dated July 30, 2008, September 30, 2008, November 21, 2008, April 29, 2009, December 31, 2009, January 29, 2010, February 12, 2010, March 31, 2010, May 28, 2010, June 30, 2010 July 30, 2010, August 31, 2010 and September 17, 2010 respectively, (collectively, the "Senior Credit Agreement")**

1. All capitalized terms used herein but not defined shall have the meanings given thereto in the Senior Credit Agreement.
2. In accordance with Section 2.8(3) of Amendment No. 2, the Company delivered to the Lenders a calculation of the financial covenants in Sections 8.03(1)(a), 8.03(1)(b) and 8.03(1)(c) of the Credit Agreement (the "**Financial Covenants**") and a forecast of such covenants as at December 31, 2009 (the "**Forecast Calculations**"). The Forecast Calculations demonstrate that the Company will not be in compliance with the Financial Covenants as at December 31, 2009 and as a result thereof a Default occurred and is continuing (the "**Financial Covenant Default**") and an Event of Default will occur and be continuing as at December 31, 2009 (the "**Financial Covenant Event of Default**").
3. Pursuant to a Limited Purpose Waiver Agreement dated as of December 2, 2009: (a) the Administrative Agents and the Lenders provided a limited purpose waiver solely with respect to the Financial Covenant Default for the purposes of (i) allowing the Company to extend the expiry date of specified letters of credit to June 30, 2010; and (ii) allowing the Borrowers to have continued access to the Revolving Credit Facility until 5:00 p.m.



(Toronto Time) on December 31, 2009 on the terms and conditions specified therein; and (b) the parties thereto acknowledged that the Financial Covenant Default had occurred and is continuing, and that the Financial Covenant Event of Default will occur and be continuing as at December 31, 2009.

4. Pursuant to a forbearance agreement dated as of December 31, 2009, the Administrative Agents and the Lenders agreed to forbear from December 31, 2009 until January 29, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and Anneleen Eckhardt Holdings Limited (the "**Parent Entity**" or the "**Limited Recourse Guarantor**") solely with respect to the Financial Covenant Event of Default on the terms and conditions thereof.
5. Pursuant to a forbearance agreement dated as of January 29, 2010, the Administrative Agents and the Lenders agreed to forbear from January 29, 2010 until February 12, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default on the terms and conditions thereof.
6. Pursuant to a forbearance agreement dated as of February 12, 2010, the Administrative Agents and the Lenders agreed to forbear from February 12, 2010 until April 12, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default on the terms and conditions thereof.
7. Pursuant to a forbearance agreement dated as of March 31, 2010, the Administrative Agents and the Lenders agreed to forbear from April 12, 2010 until May 28, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default and the Forbearance Events of Default (as defined therein) on the terms and conditions thereof.
8. Pursuant to a forbearance agreement dated as of May 28, 2010, the Administrative Agents and the Lenders agreed:
  - (a) to forbear from May 28, 2010 until June 30, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation (as defined therein) with Nelson Kraus Holdings Limited ("**NKHL**") and the requisite agreement with BMO Capital Corporation ("**BMOCC**") in order to effect the Consensual Agreement (as defined therein), provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.

9. Pursuant to a forbearance agreement dated as of June 30, 2010, the Administrative Agents and the Lenders agreed:
  - (a) to forbear from June 30, 2010 until July 30, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
10. Pursuant to a forbearance agreement dated as of July 30, 2010, the Administrative Agents and the Lenders agreed:
  - (a) to forbear from July 30, 2010 until August 31, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
11. Pursuant to a forbearance agreement dated as of August 31, 2010 (the "**August 31 Forbearance Agreement**"), the Administrative Agents and the Lenders agreed:
  - (a) to forbear from August 31, 2010 until September 10, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
12. On September 10, 2010, the Administrative Agent and the Lenders agreed:

555

- (a) to forbear from September 10, 2010 until September 17, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
- 13. Pursuant to a forbearance agreement dated as of September 17, 2010, the Administrative Agents and the Lenders agreed:
  - (a) to forbear from September 17, 2010 until September 30, 2010 from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default; and
  - (b) to provide the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders did not consent to or agree to the terms of the Consensual Agreement and that the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
- 14. Pursuant to the terms of the Senior Credit Agreement, upon the occurrence and during the continuation of an Event of Default under the Senior Credit Agreement, among other things, the obligations of the Lenders to make further Accommodations immediately terminate.
- 15. Pursuant to the terms of the Senior Credit Agreement, the BMOCC Subordination Agreement dated as of July 24, 2007 (as amended) and the VTB Subordination Agreement dated as of June 28, 2007 (as amended), as a result of the Financial Covenant Default and the Financial Covenant Event of Default, the Borrowers and the Guaranteeing Parties shall not be entitled to make, and the respective holders of the VTB Note and the BMOCC Subordinated Debt shall not be entitled to receive, payments of any kind. Pursuant to the Subordination and Postponement Agreement dated as of January 26, 2009 between, *inter alia*, the Administrative Agents, the Company, and Anneleen and Harold Eckhardt, no payments of principal, interest or fees in respect of the Subordinate Debt (as defined therein) are permitted until such time as the Senior Debt (as defined therein) is paid in full.
- 16. The Company has informed the Administrative Agents and Lenders that:

- (a) it is working diligently to complete the Definitive NKHL Documentation and to satisfy the conditions precedent contained in the Consensual Agreement, which include, among others, obtaining the consent of BMOCC and the Lenders with respect to the terms of the Consensual Agreement, which consents have not yet been obtained; and
  - (b) it requires a further extension of time to work with counsel to NKHL to complete the Definitive NKHL Documentation and to satisfy the conditions precedent contained in the Consensual Agreement.
- 17. This Letter Agreement is provided to allow the Company time to complete and enter into the Definitive NKHL Documentation with NKHL and the requisite agreements with BMOCC in order to effect the Consensual Agreement, provided that, for greater certainty, the Lenders have not consented to or agreed to the terms of the Consensual Agreement as of the date hereof and the prior written consent of the Lenders shall be required for the execution and delivery of the Definitive NKHL Documentation and any definitive documentation with respect to BMOCC.
- 18. The Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor acknowledge and confirm that:
  - (a) the confirmations, acknowledgements and covenants provided by the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor in section 16 of the March 31, 2010 Forbearance Agreement are hereby ratified and confirmed in all respects save and except for sections 16(c) and 16(h) therein;
  - (b) Events of Default, including the Financial Covenant Event of Default, have occurred, are continuing and have not been waived by the Lenders;
  - (c) the Administrative Agents and the Lenders are entitled to exercise their rights in respect of the Financial Covenant Event of Default and have agreed to forbear from exercising such rights only because each of the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor expressly have agreed to the terms and conditions stated herein; and
  - (d) notice shall be provided by the Company to the Administrative Agents and the Lenders forthwith upon:
    - (i) the withdrawal of any party from, the failure to comply with or the termination of the process of preparing and finalizing the Definitive NKHL Documentation by either NKHL or the Company;
    - (ii) the breach of any term or condition under the Definitive NKHL Documentation by either NKHL or the Company; and
    - (iii) the termination of the Definitive NKHL Documentation by either NKHL or the Company.

19. At the request of the Borrowers and as an accommodation thereto, the Administrative Agents and the Lenders are prepared:
- (a) to forbear from the date hereof until Friday, December 31, 2010 (the "**Forbearance Period**") from enforcing their rights and remedies against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor solely with respect to the Financial Covenant Event of Default on the terms and conditions hereof, each of which is acknowledged and agreed to by the execution and delivery of this Letter Agreement by the Borrowers; and
  - (b) during the Forbearance Period, subject to the terms hereof, to allow the Borrowers to continue to have access to the Revolving Credit Facility (including the existing Letter of Credit Availability Amount of \$1,500,000, provided that no Letter of Credit shall have an expiry date that occurs after June 30, 2011 (and, for greater certainty, the expiry date of the letters of credit listed on Schedule A may be extended to June 30, 2011)) provided that (i) the aggregate Accommodations Outstanding at any time (including Swingline Advances) under the Revolving Credit Facility shall not exceed \$40,000,000 and provided that the Accommodations Outstanding to the Canadian Borrowers shall not at any time exceed \$30,000,000 and the Accommodations Outstanding to the U.S. Borrowers shall not at any time exceed the U.S. Dollar Equivalent Amount of \$10,000,000 (the "**Specified Caps**"), (ii) the Borrowing Base shall not be less than \$40,000,000 at any time; (iii) all of the conditions precedent to the making of Accommodations by the Lenders specified in the Senior Credit Agreement shall be satisfied (including, without limitation, compliance with Section 2.13 of the Senior Credit Agreement, but other than the non-occurrence of the Financial Covenant Event of Default and any non-payment of amounts due under the VTB Subordinated Debt); and (iv) additional Accommodations shall not be available as BA Instruments or as Eurodollar Rate Advances. For greater certainty, National Bank of Canada and Bank of Montreal, in their capacities as Swingline Lenders, may in their sole, absolute and unfettered discretion (but shall not be obligated to) continue to make Swingline Advances to the Borrowers up to the Canadian Swingline Availability Amount and the U.S. Swingline Availability Amount on a revolving basis and accept repayments thereof on the terms and conditions specified in the Senior Credit Agreement, in each case, provided that the Accommodations Outstanding at any time (including Swingline Advances) under the Revolving Credit Facility shall not exceed the Specified Caps.
20. During the Forbearance Period: (a) the Applicable Margins shall be (i) 450 bps in respect of Eurodollar Rate Advances/BA Drawing Fee/Letter of Credit Fee, and (ii) 325 bps in respect of Canadian Prime Rate Advances/U.S. Base Rate Advances/Base Rate (Canada) Advances; and (b) the Applicable Standby Fee shall be 50 bps.
21. Interest and default interest continues to accrue under and pursuant to the Senior Credit Agreement.
22. In all respects, other than as expressly amended by this Letter Agreement, the provisions of the Credit Documents shall continue to apply unamended and shall remain in full force and effect.



23. The Company hereby covenants to deliver the monthly financial projections of the Company and the Restricted Subsidiaries for the 2011 Financial Year (including income statements, balance sheets, statements of cash flow, covenant calculations and management's discussion of assumptions and underlying projections) to the Agents and the Lenders by November 30, 2010.
24. Nothing in this Letter Agreement shall prejudice the Administrative Agents' and the Lenders' rights to pursue any of their remedies at any time and from time to time, including, without limitation, enforcing the Security:
  - (a) prior to execution and delivery of this Letter Agreement by the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor; or
  - (b) upon the expiry or earlier termination of the Forbearance Period.
25. Notwithstanding anything contained to the contrary in any of the Credit Documents, upon the occurrence of any of: (A) any non-compliance with any of the terms and conditions of this Letter Agreement (including, without limitation, Sections 19(b), 32 and 33); or (B) an Event of Default (including any action with respect to the acceleration of the VTB Subordinated Debt or the BMOCC Subordinated Debt) other than (y) the Financial Covenant Event of Default, and (z) any non-payment of amounts due under the VTB Subordinated Debt or the BMOCC Subordinated Debt:
  - (a) the Forbearance Period shall automatically terminate without further notice, demand or any other requirement by the Administrative Agents or the Lenders to the Borrowers, the Guaranteeing Parties or the Limited Recourse Guarantor and the Administrative Agents and the Lenders, without further notice or demand:
    - (i) shall be entitled to refrain from providing, and shall not be obligated to provide, any form of accommodation, credit or advances whatsoever to the Borrowers;
    - (ii) shall be entitled to pursue any or all remedies available against one or more of the Borrowers, the Guaranteeing Parties or the Limited Recourse Guarantor at any time and from time to time in accordance with the Credit Documents, including, without limitation, by enforcing some or all of the Security; and
    - (iii) all obligations under the Credit Documents shall be immediately due and payable, without any requirement for the Administrative Agents to deliver a notice to the Borrowers, the Guaranteeing Parties or the Limited Recourse Guarantor without presentment, demand, protest or other requirements of any kind, each of which (together with any notice) are expressly waived by the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor to the extent permitted by law.
26. Other than as may be consented to in writing by the Administrative Agents and the Lenders, the occurrence of the following events shall also constitute an Event of Default:



- (a) if any of the Borrowers or the Guaranteeing Parties fail to deliver any of the documentation and information set out in Sections 18(d), 23, 32 and 33 herein;
  - (b) the withdrawal of any party from, the failure to comply with or the termination of the process of preparing and finalizing the Definitive NKHL Documentation by either NKHL or the Company;
  - (c) the breach of any term or condition under the Definitive NKHL Documentation by either NKHL or the Company;
  - (d) the termination of the Definitive NKHL Documentation by either NKHL or the Company;
  - (e) if the Definitive NKHL Documentation is not completed prior to Friday, December 31, 2010, or such later date as agreed to by NKHL and the Company; and
  - (f) if all the conditions precedent to the Consensual Agreement are not satisfied prior to Friday, December 31, 2010, or such later date as agreed to by NKHL and the Company.
27. (a) In conjunction with the Consultants' review of the Company's December 31, 2009 financial statements, the Consultants shall review the Borrowing Base calculation (together with the underlying information) as at December 31, 2009. (b) If at any time during the Forbearance Period the Borrowing Base is less than \$41,000,000, then the Administrative Agents and the Lenders may engage the Consultants (Ernst & Young Inc. or any other or additional Consultants that may be appointed in accordance with Section 2.7 of Amendment No. 2) to conduct an audit of the Collateral (including a field audit and inventory appraisal). All costs and expenses in connection with such audit shall be for the account of the Company. The Company and its Subsidiaries shall co-operate fully with the Administrative Agents, the Lenders, the Consultants and their counsel and advisors in connection with such audit.
28. No waiver or indulgence by the Administrative Agents and the Lenders of any of their rights and remedies under any of the Credit and Security Documents or at law or equity shall be construed as a waiver of any other or subsequent right or remedy of the Administrative Agents and the Lenders and no delay or omission in the exercise or enforcement by the Administrative Agents and the Lenders of their rights and remedies under any of the Credit and Security Documents or at law or equity shall be construed as a waiver of any right or remedy of the Administrative Agents and the Lenders, and the Administrative Agents and the Lenders reserve all rights, claims and remedies that each has or may have against the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor under any of the Credit and Security Documents or at law or equity.
29. The Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor each hereby covenant not to bring any action, application, petition, suit or other proceeding against the Administrative Agents, the Lenders, the Affiliates or their respective officers, directors, employees, agents, successors and assigns (the "Released Parties") and hereby irrevocably and unconditionally release and forever discharge the Released Parties of and

from all manner of actions, causes of action, suits, debts, liabilities, costs, claims, accountings and demands, in law, in equity or otherwise, which each of them may now or hereafter have or might otherwise be entitled to make (collectively, the "Claims") for or by any reason of any cause, matter or thing whatsoever as of the date hereof including, without limitation, any Claims pursuant to, arising from or in connection with any matters relating to the affairs among the Administrative Agents or the Lenders and the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor prior to the date hereof, whether in connection with (a) the Credit and Security Documents; (b) advances or non-advances of credit to the Borrowers; or (c) otherwise, save and except for any fraud, wilful misconduct or gross negligence.

30. Each of the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor further undertake, covenant and agree to make no claim and to take no action or proceeding whatsoever against any person not a party to the release granted herein that could result in any claim over against the Released Parties, in respect of any and all matters or things released in this release, or for any form of contributions, indemnity or other relief whether arising at law, equity or under the provisions of the *Negligence Act* R.S.O. 1990 c. N-1.
31. For greater certainty, nothing in this Letter Agreement shall constitute a waiver of any Event of Default, the Financial Covenant Event of Default or any other default or event of default which has or may occur under any of the Credit Documents.
32. Each of the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor shall provide, forthwith upon demand, such further or additional documents and information, whether provided for in the Credit and Security Documents or otherwise, as the Administrative Agents, the Lenders, or their Consultants may require.
33. Each of the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor shall cause their respective management and legal and financial advisors to make themselves available for any discussions with and to provide any and all information reasonably required by the Administrative Agents, the Lenders, or their Consultants.
34. The Company, on behalf of itself and its Subsidiaries, consents to the Administrative Agents, the Lenders and their advisors and counsel corresponding directly with Kraus Holdco with respect to the Senior Credit Agreement, the VTB Subordination Agreement (as amended), the VTB Subordinated Debt, the financial condition of the Company and its Subsidiaries, and all matters related to any of the forgoing provided that a representative of the Company shall be invited to be present at any meeting and/or to participate in any telephone call conducted pursuant to this paragraph and the Company shall be entitled to request periodic updates with respect to any other correspondence with Kraus Holdco.
35. All references in this Letter Agreement to dollars or \$ are references to Canadian currency.
36. As consideration for the Lenders agreeing to forbear until the termination of the Forbearance Period, the Borrowers shall pay to the Canadian Administrative Agent for the account of the Lenders a forbearance fee in the amount of \$230,000 (the

561

**"Forbearance Fee").** The Forbearance Fee shall be fully earned, non-refundable and shall be payable to the Administrative Agents, for and on behalf of the Lenders, at the time that this Letter Agreement is executed by the Borrowers and the Guaranteeing Parties.

37. This Letter Agreement may be executed in counterparts, whether by original copy or facsimile, and each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument.
38. This Letter Agreement is governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Borrowers, the Guaranteeing Parties and the Limited Recourse Guarantor consent and agree that the court of the Province of Ontario shall have non-exclusive jurisdiction to hear and determine any claims or disputes between the parties hereto pertaining to this Letter Agreement.

**[Signature page follows]**

If the foregoing is acceptable to you, please signify your acceptance in the space provided below and return a copy of this Letter Agreement to the Administrative Agents, for itself and on behalf of the Lenders.

**NATIONAL BANK OF CANADA, as  
Canadian Administrative Agent**

Per:



Authorized Signing Officer  
**JEAN GOSSELIN**  
**SENIOR MANAGER**

**BANK OF MONTREAL, as U.S.  
Administrative Agent**

Per:

\_\_\_\_\_  
Authorized Signing Officer



If the foregoing is acceptable to you, please signify your acceptance in the space provided below and return a copy of this Letter Agreement to the Administrative Agents, for itself and on behalf of the Lenders.

NATIONAL BANK OF CANADA, as  
Canadian Administrative Agent

Per

\_\_\_\_\_  
Authorized Signing Officer

BANK OF MONTREAL, as U.S.  
Administrative Agent

Per

*KW Evans*  
\_\_\_\_\_  
Authorized Signing Officer

NATIONAL BANK OF CANADA, as  
Canadian Revolving Credit Lender, Facility B  
Lender, Facility C Lender, Canadian Letter of  
Credit Lender, Canadian Swingline Lender

Per:



Authorized Signing Officer

JEAN GOSSELIN  
SENIOR MANAGER

Per:



Authorized Signing Officer

BENOIT BLAIS  
SENIOR MANAGER

NATIONAL BANK OF CANADA, NEW  
YORK BRANCH, as U.S. Revolving Lender

Per:

\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer



**NATIONAL BANK OF CANADA**, as  
Canadian Revolving Credit Lender, Facility B  
Lender, Facility C Lender, Canadian Letter of  
Credit Lender, Canadian Swingline Lender

Per:

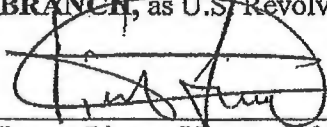
\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

**NATIONAL BANK OF CANADA, NEW  
YORK BRANCH**, as U.S. Revolving Lender

Per:

  
\_\_\_\_\_  
Vincent Lima - Vice president

Per:

  
\_\_\_\_\_  
Peter Fiorillo - AVF

**BANK OF MONTREAL, as Canadian  
Revolving Credit Lender, Facility B Lender,  
Facility C Lender**

Per:

*Jeffrey Boyd*  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

**BANK OF MONTREAL, CHICAGO  
BRANCH, as U.S. Revolving Credit Lender**

Per:

\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

**BANK OF MONTREAL, as Canadian  
Revolving Credit Lender, Facility B Lender,  
Facility C Lender**

Per:


\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

**BANK OF MONTREAL, CHICAGO  
BRANCH, as U.S. Revolving Credit Lender**

Per:

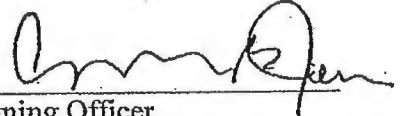
  
\_\_\_\_\_  
Authorized Signing Officer  
Larry Allan Swiniarski  
Vice President  
Bank of Montreal  
Chicago Branch

Per:

\_\_\_\_\_  
Authorized Signing Officer

**COMERICA BANK, CANADA BRANCH,**  
as Canadian Revolving Credit Lender, Facility  
B Lender and Facility C Lender

Per:



Authorized Signing Officer

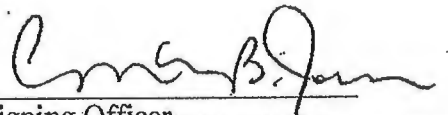
**CYNTHIA B. JONES**  
**VICE PRESIDENT**

Per:

Authorized Signing Officer

**COMERICA BANK, as U.S. Revolving Credit**  
Lender

Per:



Authorized Signing Officer

**CYNTHIA B. JONES**  
**VICE PRESIDENT**

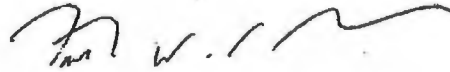
Per:

Authorized Signing Officer

569

**THE ROYAL BANK OF SCOTLAND N.V.  
(CANADA) BRANCH,** as Canadian  
Revolving Credit Lender, Facility B Lender and  
Facility C Lender

Per:



David W. Stack, Senior Vice President

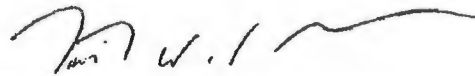
Per:



Parker H. Douglas, Managing Director

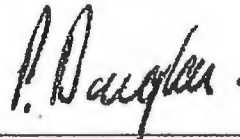
**THE ROYAL BANK OF SCOTLAND N.V.,**  
as U.S. Revolving Lender

Per:



David W. Stack, Senior Vice President

Per:

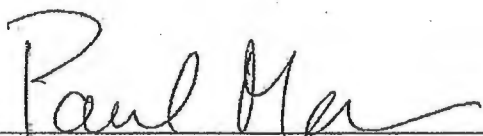


Parker H. Douglas, Managing Director

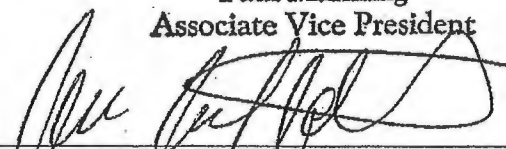
- 16 -

**THE TORONTO-DOMINION BANK, as**  
Canadian Revolving Credit Lender, Facility B  
Lender and Facility C Lender

Per:

  
\_\_\_\_\_  
Authorized Signing Officer  
**Paul Manning**  
Associate Vice President

Per:

  
\_\_\_\_\_  
Authorized Signing Officer  
**Maurice Moffett**  
Senior Manager

**TORONTO DOMINION (TEXAS) LLC, as**  
U.S. Revolving Credit Lender

Per:

\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer



**THE TORONTO-DOMINION BANK, as**  
Canadian Revolving Credit Lender, Facility B  
Lender and Facility C Lender

Per:

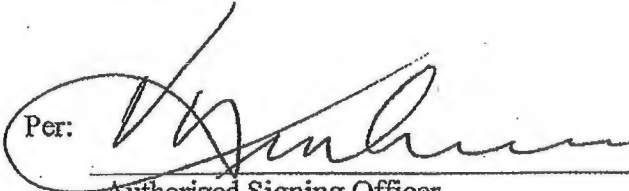
\_\_\_\_\_  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

**TORONTO DOMINION (TEXAS) LLC, as**  
U.S. Revolving Credit Lender

Per:

  
\_\_\_\_\_  
Authorized Signing Officer  
**Victor J. Huebner**  
Authorized Signing Officer

Per:

\_\_\_\_\_  
Authorized Signing Officer

Each of the undersigned hereby confirm their agreement to the foregoing and acknowledge having received a copy hereof.

**STRUDEX FIBRES LIMITED**

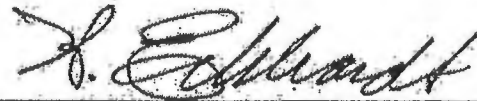
Per:



Authorized Signing Officer

**KRAUS INC.**

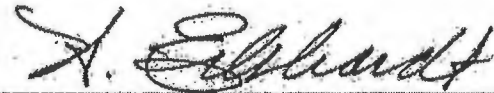
Per:



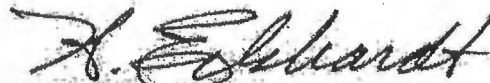
Authorized Signing Officer

**KRAUS CANADA INC.**

Per:



Authorized Signing Officer



**BARRETT CARPET MILLS, INC.**

Per:



Authorized Signing Officer

KRAUS USA, INC.

Per:   
Authorized Signing Officer

538626 B.C. LTD.

Per:   
Authorized Signing Officer

NORTHSTATE CARPET MILLS PTY  
LTD.

Per:   
Authorized Signing Officer

ANNELEEN ECKHARDT HOLDINGS

LIMITED , as Parent Entity

Per:   
Authorized Signing Officer

**SCHEDULE A**  
**LETTERS OF CREDIT**

- 1) Beneficiary: Kaindl Flooring GMBH, amount to: 600,000 CAD, expiry date: December 31, 2010;
- 2) Beneficiary: Moneris Solutions Corporation, amount to 70,000 CAD, expiry date: December 31, 2010;
- 3) Beneficiary: Kaindl Flooring GMBH, amount to: 150,000 USD, expiry date: December 31, 2010.